Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PRESIDIO COMPONENTS, INC., PLAINTIFF,	07CV0893-IEG
VS.	SAN DIEGO, CA MAY 8, 2008 8:30 A.M.
AMERICAN TECHNICAL CERAMICS CORPORATION, DEFENDANT.	

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE IRMA E. GONZALEZ

UNITED STATES DISTRICT CHIEF JUDGE

APPEARANCES:

FOR THE PLAINTIFF:
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BRETT A. SCHATZ, ESQ.
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FOR THE DEFENDANT:
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY & POPEO, PC
BY: MARVIN S. GITTES, ESQ.
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PROCEEDINGS RECORDED BY ELECTRONIC STENOGRAPHY; TRANSCRIPT PRODUCED BY COMPUTER.

I N D E X

ARGUMENTS OF COUNSEL:	PAGE
MR. AHRENS	8
MR. GITTES	41
MR. AHRENS	79
MR. GITTES	113

WITNESS:	DR	CR	RD	RC
JOSEPH P. DOUGHERTY	48	85	--	--

THE DEPUTY CLERK: NUMBER ONE ON CALENDAR, CASE 07CV0893, PRESIDIO COMPONENTS, INC. VS. AMERICAN TECHNICAL CERAMICS CORPORATION, FOR A CLAIMS CONSTRUCTION HEARING.

THE COURT: YOUR APPEARANCES, PLEASE.

MR. AHRENS: GOOD MORNING, YOUR HONOR.

GREGORY AHRENS ON BEHALF OF THE PLAINTIFF, PRESIDIO, AND AT COUNSEL TABLE WITH ME IS MY PARTNER, BRETT SCHATZ, AND OUR CLIENTS, MR. ALAN DEVOE AND LAMBERT DEVOE, NAMED DEFENDANTS ON THE PATENT SUIT.

THE COURT: GOOD MORNING.

MR. SCHATZ: GOOD MORNING, YOUR HONOR.

MR. GITTES: GOOD MORNING, YOUR HONOR.

MARVIN GITTES FOR AMERICAN TECHNICAL CERAMICS CORPORATION. WITH ME AT COUNSEL TABLE ARE TIMUR SLONIM AND PETER SNELL, AND BEHIND OUR TABLE IS OUR EXPERT WITNESS, JOSEPH DOUGHERTY.

THE COURT: THANK YOU.

YOU MAY BE SEATED.

I'LL HEAR SUGGESTIONS ON HOW YOU WOULD LIKE TO PROCEED. I KNOW THAT ONE SIDE WANTED A FULL DAY; THE OTHER SIDE SUGGESTED HALF A DAY. I'M EXTREMELY BUSY, SO I CAN DEVOTE UNTIL TWELVE O'CLOCK; THEN WE'LL HAVE TO TAKE A BREAK AT SOME POINT. THAT'S IT, BECAUSE I HAVE A MATTER AT 12:15 AND I HAVE ANOTHER MATTER AT 1:00 THAT WILL TAKE ALL AFTERNOON. SO THERE IS NO MORE TIME, AND SO WE WILL TRY, AND IF WE DON'T FINISH, THEN THAT'S IT. I'LL JUST RULE BASED ON THE PAPERS THAT HAVE BEEN SUBMITTED.

I GUESS THERE ARE A COUPLE OF THINGS THAT I THINK NEED TO BE ADDRESSED IN MORE DEPTH THAN OTHERS, BUT I CAN GET TO THAT IN A FEW MINUTES. HAD YOU TALKED ABOUT HOW YOU WOULD LIKE TO PROCEED? I KNOW I INDICATED TO BOTH SIDES THAT I WOULD ALLOW EXPERTS TO TESTIFY, AND SO I'LL HEAR FROM PRESIDIO FIRST, IF YOU WOULD LIKE TO GO FORWARD.

MR. AHRENS: YES, YOUR HONOR.

THE COURT: MR. AHRENS.

MR. AHRENS: WOULD YOU LIKE ME TO ADDRESS HOW WE OUGHT TO FLOW?

THE COURT: YES.

MR. AHRENS: ALTHOUGH WE INDICATED IN OUR INITIAL FILINGS THAT WE MAY CALL OUR EXPERT WITNESS, WE DECIDED NOT TO, SO WE DON'T HAVE A LIVE WITNESS. I HAVE A PRESENTATION, AND, FRANKLY, I SHOULD BE ABLE TO CONVEY TO YOU WHAT I NEED TO CONVEY IN AN HOUR.

THE COURT: OKAY. I SET ASIDE THE ENTIRE MORNING. OBVIOUSLY, I'M GOING TO HAVE SOME QUESTIONS --

MR. AHRENS: SURE.

THE COURT: -- AND SO I'D LIKE YOU TO AT LEAST START FIRST, AND THEN ONCE WE GET STARTED, THEN WE CAN TAKE IT FROM THERE, IF YOU DON'T MIND.

MR. AHRENS: THAT'S PERFECTLY FINE, YOUR HONOR. IF IT

WOULD BE APPROPRIATE TO MAYBE RESERVE A FEW MINUTES AFTER.

THE COURT: ABSOLUTELY. I'LL LET YOU GO BACK AND FORTH. I'LL LET YOU START FIRST. WE'LL GO TO THE OTHER SIDE. THEN YOU CAN REPLY, AND, IF NECESSARY, WE CAN GO BACK AND FORTH ANOTHER TIME.

MR. AHRENS: YOU DON'T WANT US TO GO ON A TERM-BY-TERM BASIS BACK AND FORTH, DO YOU?

THE COURT: NO, I DON'T. I WOULD LIKE YOU TO ADDRESS ALL THE TERMS.

MR. AHRENS: OKAY.

THE COURT: THAT WOULD PROBABLY BE EASIER. SO THE OTHER SIDE IS NOT GOING TO HAVE MUCH, I MEAN, AT LEAST FOR A WHILE, IS NOT GOING TO BE ADDRESSING THE ISSUES.

NOW, WHO SUBMITTED THE -- I HAVE THIS NOTEBOOK IN FRONT OF ME, AND THIS WAS SUBMITTED BY WHOM?

MR. GITTES: ATC, YOUR HONOR.

THE COURT: ATC. OKAY, SO LET THE RECORD REFLECT THAT I DO HAVE A NOTEBOOK THAT'S BEEN SUBMITTED BY ATC, AND THEN I THINK I'VE GOT EVERYTHING ELSE HERE THAT HAS BEEN SUBMITTED BY BOTH SIDES. I HAVE ALL YOUR PAPERS. I HAVE THE PATENT HERE, SO LET ME GRAB THAT.

MR. AHRENS: YOUR HONOR, I PROVIDED A NOTEBOOK OF THIS TYPE, A SPIRAL-LOOKING NOTEBOOK, THAT I GAVE TO YOUR DEPUTY A MOMENT AGO.

THE COURT: YES. OH, HERE IT IS. I'M IN THE MIDDLE

OF TRIAL. I HAVE A LOT OF THINGS UP HERE, SO.

MR. AHRENS: I APOLOGIZE, YOUR HONOR.

THE COURT: THAT'S ALL RIGHT. I HAVE IT.

MR. AHRENS: AND ESSENTIALLY WHAT IT IS, WITH ONE EXCEPTION, IT'S COPIES OF EXHIBITS THAT WERE FILED IN CONNECTION WITH THE BRIEFS. I JUST BROUGHT THEM INTO ONE DOCUMENT FOR A LITTLE BIT EASIER REFERENCE, AND I'M NOT SURE WHAT YOUR POLICY IS ON ACCEPTING THINGS LIKE THAT AS EVIDENCE. ATC'S SUBMISSION IS BASICALLY A POWERPOINT PRESENTATION.

THE COURT: IT'S NOT REALLY -- WHAT I DO IS, I'VE ALWAYS, WHEN I'VE HAD THESE HEARINGS, ALLOWED THE PARTIES TO SUBMIT NOTEBOOKS FOR (PAUSE) --

MR. AHRENS: DEMONSTRATIVE.

THE COURT: -- FOR DEMONSTRATIVE EVIDENCE, AND I DO KEEP THEM TO LOOK AT THEM AS A REFERENCE. I MEAN, I DON'T RECEIVE THEM AS EXHIBITS. OBVIOUSLY, THE PAPERS AND THE EXHIBITS ATTACHED ARE WHAT IS GOING TO BE IN THE RECORD, BUT CERTAINLY, TO HELP ME UNDERSTAND BETTER AND TO FOLLOW ALONG, I THINK IT'S IMPORTANT TO HAVE THESE. SO I WON'T MARK THEM AS EXHIBITS, BUT I CERTAINLY WILL USE THEM IN UNDERSTANDING THE TERMS.

MR. AHRENS: OKAY.

THE COURT: OKAY, IS THAT AGREEABLE WITH BOTH SIDES?

NOW, THERE ARE NOT AS MANY TERMS AS I'VE HAD IN THE PAST IN OTHER HEARINGS. THAT'S GOOD, AND SO LET ME MAKE SURE

THAT I UNDERSTAND WHAT THE DISPUTED TERMS ARE. AS I UNDERSTAND IT, A SUBSTANTIALLY MONOLITHIC DIELECTRIC BODY IS A DISPUTED TERM. CORRECT?

MR. AHRENS: CORRECT.

MR. GITTES: YOUR HONOR, I DON'T MEAN TO INTERRUPT. IF YOU'LL TURN TO SLIDE 3, YOU'LL SEE THEM ALL OUTLINED AND NUMBERED. PERHAPS THAT WILL MAKE IT EASIER.

THE COURT: YES. OH, OKAY.

MR. GITTES: THIS SLIDE, YOUR HONOR.

THE COURT: I SEE IT, YES. A SUBSTANTIALLY MONOLITHIC DIELECTRIC BODY. I'LL TELL YOU NOW I DO NEED SUBSTANTIAL ARGUMENT, PRESENTATION, ON THE FIRST TERM AND THE SECOND TERM. NOW, THE SECOND AND THIRD TERMS ARE BASICALLY, YOU KNOW, ONCE I DECIDE THE SECOND TERM, I THINK THE THIRD TERM FOLLOWS, AND SO THOSE WERE THE TWO, THE FIRST AND SECOND TERMS, THAT I FELT THAT I NEEDED MORE ARGUMENT ON, RATHER THAN, AND, YOU KNOW, OBVIOUSLY, I WANT YOU TO ADDRESS ALL OF THEM, BUT I REALLY DO WANT YOU TO CONCENTRATE ON THE FIRST TWO.

MR. AHRENS: THE SUBSTANTIALLY MONOLITHIC AND THEN THE CONDUCTIVE FIRST CONTACT?

THE COURT: YES.

MR. AHRENS: OKAY.

THE COURT: AND I MAY NOT NEED ARGUMENT ON THE, ON WHAT YOU CALL, WELL, THE THIRD -- I'M LOOKING AT THE CHART THAT WAS SUBMITTED BY THE DEFENDANT THAT'S LISTED AS NUMBER THREE.

MR. AHRENS: TWO AND THREE ARE (PAUSE) --

THE COURT: ARE THE SAME.

MR. AHRENS: -- ESSENTIALLY THE SAME, SO THEY GO TOGETHER.

THE COURT: RIGHT. RIGHT. THE THIRD TERM, I FEEL FAIRLY COMFORTABLE WITH THAT ONE, SO I MAY NOT NEED THAT MUCH ARGUMENT, BUT PROBABLY THE LAST TERM. YES, BUT NOT AS MUCH AS THE FIRST TWO. SO THAT'S WHERE I AM RIGHT NOW.

MR. AHRENS: ONE, TWO, SIX, THREE, FOUR, FIVE?

THE COURT: CORRECT.

MR. AHRENS: OKAY.

THE COURT: OKAY.

MR. AHRENS: GOOD MORNING AGAIN, YOUR HONOR.

THE COURT: GOOD MORNING.

THANK YOU FOR BEING HERE EARLY.

MR. AHRENS: ABSOLUTELY. AFTER WE GOT THE E-MAIL ON SUNDAY MORNING TELLING US ABOUT THE --

THE COURT: YES.

MR. AHRENS: -- UNFORTUNATE INCIDENT YOU HAD HERE, WE WERE ALL CONCERNED ABOUT YOUR SITUATION.

THE COURT: YES, AND WE DID CLOSE THE COURTHOUSE ON MONDAY, SO ON MONDAY IT WOULD HAVE BEEN VERY DIFFICULT TO RESCHEDULE IT, AND THAT'S WHY WE WERE A LITTLE PRESSED THIS WEEK FOR TIME. WE'VE HAD TO MOVE EVERYTHING AND PUT EVERYTHING IN THE MORNING AND NOON AND OTHER TIMES.

MR. AHRENS: ABSOLUTELY. WELL, AS I SAID, I'LL TRY TO GET TO THE POINTS. WOULD YOU LIKE ANY OTHER ISSUE ADDRESSED? I KNOW THERE'S BEEN A QUESTION OF INDEFINITENESS WHICH WAS RAISED AND THERE'S A STANDING ISSUE THAT WAS RAISED, AND ALTHOUGH THEY AREN'T DIRECTLY BEFORE YOU ON THE PAPERS TODAY, I WAS NOT NECESSARILY GOING TO ADDRESS THEM UNLESS YOU WANTED ME TO.

THE COURT: I AGREE.

MR. AHRENS: OKAY.

THE COURT: I THINK RIGHT NOW I'M MORE INTERESTED IN JUST THE TERMS.

MR. AHRENS: OKAY. WELL, I HAVE GOT AN EXPANDED COPY OF THE PATENT IN SUIT HERE, AND MY COMPATRIOT IS GOING TO HELP ME WITH SOME OF THE MOVEMENT OF IT, BUT IT'S ALSO AT TAB ONE IN YOUR BOOKLET, AND, YOU KNOW, AS YOU UNDOUBTEDLY READ, THE PATENT RELATES TO BROADBAND CERAMIC CAPACITORS THAT ARE FORMED IN SUCH A WAY THAT THEY PERFORM OVER A BROAD FREQUENCY BAND.

THE COURT: TELL ME, IN THE PRACTICAL WORLD, HOW THIS IS USED AND (PAUSE) -- LET ME GO BACK. THE PERSON SKILLED IN THE ART IS AN ELECTRICAL ENGINEER. THAT'S MY UNDERSTANDING. I'M NOT SURE IF THERE'S A DISPUTE ABOUT THAT, BUT I'M ASSUMING THAT.

MR. AHRENS: THERE'S KIND OF A SMALL DISPUTE. AT TAB TWO IN MY BOOKLET THAT I GAVE TO YOU, THERE'S THE COMPETING STATEMENTS ABOUT WHO IS A, THE ACRONYM IS PHOSITA, P-H-O-S-I-T-A, A PERSON HAVING ORDINARY SKILL IN THE ART. OUR EXPERT STATED THAT IT WOULD BE A PERSON WITH A MASTER'S DEGREE, POSSIBLY A DOCTORATE. IT'S GOING TO BE SOME ASPECT OF ELECTRICAL ENGINEERING, PERHAPS MICROWAVES OR HIGH-FREQUENCY CIRCUITRY, FIBEROPTICS. IT COULD BE SOMEBODY WHO MAKES CAPACITORS OR SOMEBODY WHO'S A USER OF THEM AND THE THINGS THAT THEY DESIGN.

THE COURT: OKAY.

MR. AHRENS: DR. DOUGHERTY HAS INDICATED A PERSON WITH A MASTER'S OR SIMILAR DEGREE OR EXPERIMENTAL EQUIVALENT IN THAT. SO IT'S CERTAINLY ELECTRICAL ENGINEERING IN NATURE. CAPACITORS ARE, CAN BE VERY SIMPLE DEVICES WITH TWO PARALLEL PLATES THAT ARE SEPARATED BY A DISTANCE, AND THE DIELECTRIC IS A NONCONDUCTIVE MATERIAL, AND IT STARTS TO CHARGE FOR A PERIOD OF TIME UNTIL THE CHARGE BUILDS UP AND IT IS ALLOWED TO, THROUGH ELECTRONIC CIRCUITRY, TO DRAIN OFF THE CAPACITOR.

IN PARTICULAR, THE PATENT IN SUIT RELATES TO A PARTICULAR TYPE OF CAPACITOR ARRAY WHICH HAS LOW CAPACITANCE VALUES UP TO HIGHER CAPACITANCE VALUES SO THAT IT CAN OPERATE THROUGH A BROAD SPECTRUM OF WAVELENGTHS, FREQUENCY WAVELENGTHS, SUCH AS WOULD BE USED IN FIBEROPTIC TELECOMMUNICATIONS, DATA TRANSMISSION SYSTEMS. WHEN YOU INSERT CIRCUITRY LIKE A CIRCUIT BOARD, YOU SEE PRINTED CIRCUIT BOARDS IN COMPUTERS, FOR EXAMPLE. MORE ELABORATE CIRCUIT BOARDS THAT HAVE CAPACITORS OF THIS TYPE ALLOW FOR DATA TRANSMISSION AND DATA IS TRANSMITTED

AT DISCRETE FREQUENCIES ON THE SPECTRUM, WHICH MAY RANGE FROM TEN KILOHERTZ TO TEN OR A HUNDRED GIGAHERTZ, AND BY HAVING A MULTITUDE OF DIFFERENT CAPACITANCES WITH CAPACITORS OF THE TYPE IN THE PATENT IN SUIT, WHAT YOU AVOID IS INSERTION LOSS, BECAUSE WHEN YOU INSERT INTO A TRANSMISSION SYSTEM, SOME TYPE OF DEVICE, WHAT YOU DEVELOP IS A LOSS OF POWER IN THAT SYSTEM, AND THAT LOSS CAN RESULT IN DATA LOSS. SO YOU CAN IMAGINE A SIGNAL BEING SCRAMBLED OR SOME OF THE DATA BEING DROPPED THAT YOU'VE PROBABLY EXPERIENCED, PERHAPS, WHEN YOU'VE USED YOUR INTERNET INTERCONNECTION, WHICH IS TYPICALLY A BROADBAND AT HIGH SPEEDS. SOMETIMES, THERE ARE GLITCHES AND IT DOESN'T GO THROUGH SMOOTHLY. SOME OF THAT CAN BE ATTRIBUTED TO INSERTION LOSS.

SO WHAT THIS CAPACITOR IN THE PATENT SUIT ALLOWS IS KIND OF A FINE-TUNING OF WHAT WE CALL THE RESONANCES IN THE TRANSMISSION SYSTEM SO THAT YOU DON'T HAVE NODES OR SPIKES OF FREQUENCY AT WHICH YOU'VE GOT, ESSENTIALLY, LIKE A DEAD SPOT. SO BY HAVING A, AND THIS IS SORT OF SHOWN IN FIGURE 21 OF THE PATENT IN SUIT IN THE FORM OF A CURVE, FOR GRAPHICAL REPRESENTATION, THAT SHOWS INSERTION LOSS MEASURED IN DECIBELS -- I'M SORRY -- DENOTED IN DECIBELS. DECIBELS IS A UNITLESS MEASURE WHICH IS A RATIO, BUT THE INSERTION LOSS IS THE DECREASE IN THE TRANSMITTED SIGNAL POWER RESULTING FROM THE INSERTION OF A DEVICE IN A TRANSMISSION LINE OR OPTICAL FIBER, AND AS I SAY, IT'S USUALLY EXPRESSED RELATIVE TO THE SIGNAL

POWER DELIVERED BEFORE YOU INSERT THE DEVICE. SO YOU TAKE THAT RATIO AND THAT DIFFERENTIAL RATIO IS THE LOSS THAT IS EXPERIENCED.

SO FIGURE 21-A SHOWS THAT THERE'S A SPIKE, A DOWNWARD SPIKE, ON THIS CHART. THE DOWNWARD SPIKE IS ACTUALLY A DECREASE IN INSERTION LOSS, AND FIGURE 21-B SHOWS HOW HAVING A CAPACITOR ARRAY OF THE TYPE OF THE PATENT IN SUIT, YOU SMOOTH OVER THAT TRANSMISSION LOSS OR INSERTION LOSS SO THAT YOU DON'T END UP WITH THAT KIND OF A DROP POINT, WHICH THEREFORE MEANS YOU WOULD BE LESS SUSCEPTIBLE TO LOSING DATA THAT'S TRANSMITTED OVER THE LINE IN WHICH THE CIRCUIT IS PRESENT.

NOW, HOPEFULLY, THAT WASN'T MORE THAN THAT YOU WANTED TO KNOW.

THE COURT: YES, THAT'S A LITTLE CLEARER. SO LET'S GO BACK TO THE FIRST TERM.

MR. AHRENS: OKAY. SO THE FIRST TERM IS A SUBSTANTIALLY MONOLITHIC DIELECTRIC BODY, AND WE CAN BREAK THAT DOWN, TO SOME EXTENT, INTO SOME OF ITS COMPONENT PARTS. SOMETIMES IN CLAIM CONSTRUCTION YOU HAVE A SINGLE WORD AND OTHER TIMES YOU HAVE A PHRASE, AND, OF COURSE, WHEN YOU'RE LOOKING AT A PHRASE, YOU DON'T ALWAYS HAVE A PHRASE THAT DEFINES THE PHRASE. SOMETIMES, YOU HAVE TO PIECE TOGETHER THE DEFINITIONS OF THE WORDS THAT MAKE UP THE PHRASE, AND I THINK IN THIS CASE A MONOLITHIC DIELECTRIC BODY ISN'T REALLY THE PART OF THIS TERM THAT'S IN DISPUTE.

IT'S, WHAT DOES THE MODIFIER *SUBSTANTIALLY* MEAN? AND IF I WERE TO SAY THAT, YOU KNOW, THE ROUND, CIRCULAR DRIVEWAY IS SUBSTANTIALLY CIRCULAR, IT MEANS THAT IT'S NOT A HUNDRED-PERCENT CIRCULAR. YOU CAN MAKE IT WITH A PROTRACTOR OR -- EXCUSE ME -- A COMPASS. I GOT MY GEOMETRY MIXED UP. BUT, RATHER, IT'S GENERALLY, FOR THE MOST PART, IN THE SHAPE OF A CIRCLE.

SO SUBSTANTIALLY MONOLITHIC, AS WE EXPRESSED IT, MEANS THAT IT'S A LARGELY, BUT NOT NECESSARILY A WHOLLY, ONE-PIECE DIELECTRIC BODY, AND WE BELIEVE THERE IS SUPPORT THROUGHOUT THE PATENT FOR THIS, AND I WOULD DIRECT YOU TO SEVERAL PLACES IN THE PATENT IN SUIT. I GUESS, INITIALLY, COLUMN 4, AND SPECIFICALLY IN COLUMN 4 THERE IS REFERENCE TO, AT LINE 30, APPROXIMATELY LINE 30, IN COLUMN 4 OF THE '356 PATENT, CAPACITOR IN PRESENT DEVICE IS AN INTEGRATED ARRAY OF CAPACITORS CONNECTED IN A SERIES AND/OR PARALLEL CIRCUITS IN A SUBSTANTIALLY MONOLITHIC DIELECTRIC BODY. SO THERE IS THE PHRASEOLOGY FROM THE CLAIM EXACTLY FOUND IN THE SPECIFICATION, WHICH IS GOOD, BECAUSE THAT PROVIDES THE SUPPORT NEEDED.

AND BELOW, AFTER IT DESCRIBES, OR IT DESCRIBES THAT THE MULTILAYER CAPACITOR IS MADE IN A CERTAIN WAY SO THAT YOU END UP WITH A DIELECTRIC BODY, MONOLITHIC, AND THEN YOU CAN ADD TO IT ADDITIONAL STRUCTURES, WHICH ARE CONDUCTIVE STRUCTURES ON THE EXTERNAL PORTION, AND PROBABLY A GOOD REFERENCE FOR YOU THERE WOULD BE FIGURE 10, FOR EXAMPLE, IN THE PATENT IN SUIT, BECAUSE FIGURE 10 SHOWS THAT THE DIELECTRIC BODY HAS THE ADDITIONAL CONDUCTORS 13 AND 12 TO THE OUTSIDE OF IT, SO THEY'RE ADDED AFTER THE DIELECTRIC MATERIAL.

THE COURT: SO THEY'RE ADDED TO THE OUTSIDE.

MR. AHRENS: RIGHT.

THE COURT: THE OUTSIDE, IS THAT WHAT YOU MEAN BY EXTERNAL?

MR. AHRENS: YES. THEY'RE TO THE EXTERIOR.

THE COURT: RIGHT.

MR. AHRENS: AND WHAT'S IN THE INSIDE HERE IS FORMED FIRST IN THE MANUFACTURING PROCESS.

THE COURT: RIGHT.

MR. AHRENS: AND THEN, WHEN THAT'S COMPLETE, YOU'VE GOT A MONOLITHIC DIELECTRIC DEVICE. I DON'T THINK THERE'S ANY DISPUTE THAT YOU'VE GOT A MONOLITHIC DIELECTRIC DEVICE AT THAT POINT. IF YOU ADD SOMETHING TO IT SO IT'S NO LONGER PART OF THE PATENTED DEVICE, SO IT'S AN ADD-ON, SO IT'S A SEPARATE PART, NOT ONE PIECE. HENCE THE USE OF THE WORD SUBSTANTIALLY.

YOU DON'T WANT TO BE CAUGHT IN A SITUATION WHERE SOMEONE TAKES THE POSITION, WELL, GEE, THOSE THINGS WERE ADDED AFTERWARDS. IT'S NOT A MONOLITHIC, ONE-PIECE STRUCTURE. SO THE QUALIFIER WHICH IS USED THROUGHOUT PATENTS HAVE BEEN, AND I'VE BEEN PRACTICING PATENT LAW FOR 20 YEARS, SUBSTANTIALLY IS A VERY COMMON MODIFIER, AND IT MEANS SOMETHING LESS THAN COMPLETE. LARGELY, BUT NOT WHOLLY, IS SORT OF THE COMMON

PARLANCE. WE SUBMITTED A DICTIONARY DEFINITION, I BELIEVE, AS ONE OF OUR EXHIBITS, AND THAT'S EXACTLY WHAT IT SAYS. SUBSTANTIALLY IS LARGELY, BUT NOT WHOLLY, OR LESS THAN A HUNDRED PERCENT, LESS THAN COMPLETE. SO THAT'S THE MODIFIER THAT WE SUGGEST AND THAT'S OUR DEFINITION.

NOW, CONVERSELY, IF YOU LOOK AT THE PROPOSED DEFINITION BY ATC, YOU SEE SOME VERY DISTINCT ADDITIONAL LANGUAGE. IN FACT, THESE DEFINITIONS READ VERY SIMILAR TO THE FIRST SEVERAL WORDS.

THE COURT: LET ME GO BACK TO WHAT YOU JUST TALKED ABOUT. SO 12 AND 13 ARE ADDED TO THE MONOLITHIC DIELECTRIC BODY.

MR. AHRENS: RIGHT.

THE COURT: AND SO THAT'S THE EXTERNAL STRUCTURE THAT YOU'RE TALKING ABOUT THAT COULD BE ADDED. IS THAT CORRECT?

MR. AHRENS: YES, AND IT'S DESCRIBED AT COLUMN 4. JUST FOR THE RECORD, TO MAKE THIS MORE CLEAR, COLUMN 4, ABOUT LINE 52, IN SPECIFIC DISCLOSED EMBODIMENTS, THE CONDUCTIVE STRUCTURES -- NOW, THESE ARE THE INTERNAL PLATES THAT YOU SEE -- MAY BE ONE OR MORE CONDUCTIVE PLATES POSITIONED INSIDE THE DIELECTRIC BODY WITH RESPECT TO A CONDUCTIVE FLOATING PLATE. ALTERNATIVELY, THE CONDUCTIVE STRUCTURES MAY BE PLACED EITHER ON AN EXTERNAL SURFACE OR INSIDE THE DIELECTRIC BODY AND CONNECTED, ETC., ETC.

SO YOU'VE GOT A SUBSTANTIALLY MONOLITHIC DIELECTRIC

BODY BECAUSE YOU'VE ADDED SOMETHING TO THE DIELECTRIC CERAMIC CAPACITOR. THE DEFINITION, IF YOU WILL, OF MONOLITHIC CERAMIC CAPACITOR, WHICH IS SUBMITTED, FRANKLY, BY ATC IN SUPPORT OF DR. DOUGHERTY'S TESTIMONY, AND IT'S AT TAB 8 IN MY BOOKLET, MONOLITHIC CERAMIC CAPACITOR. SO THIS IS THE PHRASE WITHOUT THE WORD SUBSTANTIALLY IN FRONT OF IT. OKAY. TECHNICAL DICTIONARY, A CAPACITOR THAT CONSISTS OF THIN DIELECTRIC LAYERS INTERLEAVED WITH STAGGERED METAL-FILM ELECTRODES COMPRESSED AND SINTERED TO FORM A SOLID MONOLITHIC BLOCK. THAT'S WHAT I WAS TALKING ABOUT. THAT INTERNAL PART IS FORMED AND IT'S SINTERED, IT'S HEATED, AND THE ORGANIC MATERIAL BINDERS ARE DRIVEN OFF, SO YOU'VE GOT THIS LITTLE CHUNK OF MATERIAL. THAT'S THE MONOLITHIC DIELECTRIC BODY. IF YOU ADD SOMETHING TO THE OUTSIDE OF IT, IT'S NOT PART OF THE ORIGINAL MONOLITHIC STRUCTURE, SO IT'S AN ADDITIONAL PART.

THE COURT: SO LET'S GO BACK. LET'S GO TO ATC, THEN.

MR. AHRENS: WELL, SO THEN YOU HAVE ATC WHO IS PUTTING IN LANGUAGE THAT SAYS THE DIELECTRIC BODY IS LARGELY, BUT NOT WHOLLY, WITHOUT SEAMS FROM THE INCLUSION OF CONDUCTIVE PLATES WITHIN THE DIELECTRIC BODY. YOU MIGHT WONDER, BASED ON WHAT I JUST SAID, WHERE THAT COMES FROM. THERE IS NO DISCUSSION OF SEAMS. I DON'T EVEN KNOW IF THE WORD SEAMS SHOWS UP IN THE PATENT IN SUIT, BUT THAT DEFINITION WAS DREAMED UP FOR, I'M NOT SURE WHAT REASON, UNLESS PERHAPS TO SUPPORT THE LATER NON-INFRINGEMENT ARGUMENT. BUT I ASKED DR. DOUGHERTY IN HIS

DEPOSITION, WHERE DOES THE WORD SEAM COME FROM? DOES IT COME FROM THE '365 PATENT OR DID YOU JUST COME UP WITH THAT? AND HE SAYS, *I DON'T REMEMBER*. SO HE DIDN'T EVEN REMEMBER WHERE THE WORD SEAM COMES FROM.

I DON'T BELIEVE THERE'S ANY SUPPORT. YOU KNOW, THERE'S A VERY HALLMARK PRINCIPLE IN PATENT-LAW CONSTRUCTION, WHICH IS TO AVOID THE IMPORTATION OF LIMITATIONS INTO A CLAIM. IT'S JUST A, SORT OF A, ALMOST A BLACK-LETTER RULE OF CLAIM CONSTRUCTION, AMONGST OTHER RULES, AND THIS IS OUT OF THE BLUE TO US WHY THIS WOULD BE INCLUDED WITHOUT THE SEAMS LANGUAGE FROM THE INCLUSION OF CONDUCTOR PLATES. I MEAN, YOU'VE GOT CONDUCTOR PLATES. IT'S JUST PART OF THE DEFINITION OF A MONOLITHIC DIELECTRIC BODY AS I READ IT TO YOU FROM THE DEFINITION SUBMITTED BY ATC AT TAB 8 THAT THE DIELECTRIC MONOLITHIC BODY HAS THE PLATES IN IT. SO IT ALMOST DOESN'T MAKE ANY SENSE AT ALL TO INCLUDE THIS NEGATIVE LIMITATION ABOUT BEING WITHOUT SEAMS, AND, AS I SAID, I DON'T BELIEVE THERE'S BEEN ANY SUPPORT PRESENTED IN THE PATENT SPECIFICATION FOR WHERE THAT SHOULD COME FROM.

THE COURT: OKAY.

MR. AHRENS: DO YOU HAVE ANY OTHER QUESTIONS ABOUT THAT?

THE COURT: NO, NOT AS TO THE FIRST TERM. SO, DO YOU WANT TO GO TO THE SECOND ONE? THIS ONE, I MUST ADMIT, I HAD MORE TROUBLE WITH THAN ANY OF THEM.

MR. AHRENS: ME, TOO, YOUR HONOR, AND I'LL EXPLAIN WHY. THIS PROBABLY REPRESENTS THE MOST CLASSIC EXAMPLE OF IMPORTING LIMITATIONS INTO A CLAIM THAT DON'T OTHERWISE NEED TO BE THERE. WE'VE GOT THE SIMPLE PHRASE -- I SAY *SIMPLE*. WE'VE GOT THE PHRASE A CONDUCTIVE FIRST CONTACT, AND AGAIN WE CAN BREAK THIS DOWN SORT OF SUBELEMENT BY SUBELEMENT. A CONDUCTIVE FIRST CONTACT. WE CALL IT A CONDUCTIVE MATERIAL; THEY CALL IT A CONDUCTIVE LAYER.

SO THE FIRST POINT OF DIFFERENTIATION WHICH I HIGHLIGHTED ON THIS CHART, AND I BELIEVE IT'S ALSO HIGHLIGHTED IN THE BOOKLET, IS THE TERM LAYER. WE USE LAYER -- EXCUSE ME. WE USE MATERIAL, THEY USE LAYER, AND THEN IT GOES ON TO SAY, FOR ATTACHING THE CAPACITOR TO AN EXTERNAL CONDUCTOR. SO NOW WE'VE GOT, IN THE DEFINITION PROPOSED BY ATC, WE'VE GOT A CERTAIN FUNCTION THAT'S BEEN BROUGHT IN THAT ISN'T IN THE CLAIM LANGUAGE.

THE COURT: WELL, LET'S TALK ABOUT YOUR CONSTRUCTION.

MR. AHRENS: OKAY. SO THE CONDUCTIVE FIRST CONTACT, AND WE CALL IT A CONDUCTIVE MATERIAL. THERE'S NOTHING IN THE SPECIFICATION THAT REQUIRES THE CONDUCTIVE MATERIAL TO BE A SINGLE LAYER, WHICH IS THE LIMITATION THAT IS BEING BROUGHT IN BY ATC.

THE COURT: SO THE MATERIAL -- OKAY, SO WHAT ARE YOU SAYING THE MATERIAL IS, THEN?

MR. AHRENS: WHAT'S ITS FORM?

THE COURT: YES.

MR. AHRENS: IT MAY BE A MULTIPLICITY OF LAYERS. IT DOESN'T HAVE TO BE A SINGLE LAYER. THESE THINGS ARE FORMED BY, IN SOME MANUFACTURING TECHNIQUES, BY DIPPING THE PART INTO, LIKE A PLATING TYPE OF A PROCESS OR OTHER TECHNIQUE, BUT IT DOESN'T HAVE TO BE A SINGLE PROCESS, AND IT COULD BE A BUILD-UP OF MATERIALS, AND AGAIN THERE'S NOTHING TO LIMIT THE CLAIM TO A SINGLE LAYER, WHICH IS WHAT ATC IS ATTEMPTING TO DO.

SO WE JUST CALL IT GENERALLY A MATERIAL AS A WAY OF HELPING TO DEFINE THE CONDUCTIVE FIRST CONTACT. IT'S MADE OF SOMETHING AND IT'S A MATERIAL AND IT'S A CONDUCTIVE MATERIAL, AND THAT'S CONSISTENT WITH THE SPECIFICATION AND IT'S CONSISTENT WITH THE USE TO WHICH THE PART IS PUT AND THE FUNCTION OF THE ACTUAL CONDUCTIVE FIRST CONTACT.

THE COURT: AND YOU'RE SAYING DISPOSED MEANS ARRANGED.

MR. AHRENS: YES, AND THEN WE MOVE ON. WE SAY DISPOSED EXTERNALLY ON, AND WE JUST SORT OF RESTATE THAT AS ARRANGED ON, AND THEY USE THE PHRASE BEING PRESENT ON. I'M NOT SURE THERE'S A WHOLE HECK OF A LOT OF DIFFERENCE BETWEEN ARRANGED ON, BEING PRESENT ON, AND DISPOSED ON. I MEAN, THEY ALL SOUND KIND OF THE SAME.

I THINK WE HAD AN INTERESTING COLLOQUY IN THE DEPOSITION WHEN I TOOK A CUP OF WATER AND I SET IT ON THE TABLE AND I SAID, IS THIS CUP DISPOSED ON THE TABLE? IS IT ARRANGED ON THE TABLE? IS IT PRESENT ON THE TABLE? AND WE WENT BACK

AND FORTH ABOUT WHETHER THAT WAS THE CASE, AND THEN IF YOU PUT A PIECE OF PAPER UNDER IT SO THERE'S A SEPARATION BY SOME PHYSICAL THING, IS THE CUP STILL NOT PRESENT ON THE TABLE OR DISPOSED ON THE TABLE? AND THIS IS OUTLINED IN OUR BRIEF, SO I WON'T REPEAT ALL OF THAT COLLOQUY, BUT THE POINT IS THAT YOU'VE GOT, THIS LAYER IS ARRANGED ON THE EXTERNAL PORTION OF THE DIELECTRIC BODY AS SHOWN IN THAT FIGURE 10 THAT I'VE REFERRED YOU TO.

THE COURT: OKAY, SHOW ME THAT IN THE FIGURE.

MR. AHRENS: THESE ARE THE ELEMENTS THAT ARE REFERRED TO. SO THEY'RE ON. I MEAN, THEY'RE PHYSICALLY PRESENT ON. WE SAY ARRANGED ON, PRESENT ON, DISPOSED ON. I REALLY DON'T KNOW THAT THAT MAKES A SIGNIFICANT DIFFERENCE IN THE PARLANCE, BUT IT KIND OF TIES INTO THE ISSUE OF THE LAYERS BECAUSE, YOU KNOW, IF IT WAS LIMITED TO A SINGLE LAYER AND SOMEBODY CAME ALONG AND THEIR CONTACT, YOU KNOW, WAS REALLY A BUILD-UP OF MULTIPLE LAYERS AND THEN THEY COULD SAY, WELL, THE CONTACT POINT WHICH IS WHAT'S SOLDERED TO THE CIRCUIT BOARD IS THE PINK LAYER, AND SO THE PINK LAYER DOESN'T TOUCH THE INTERIOR. THE PINK LAYER TOUCHES THE BLUE LAYER, WHICH TOUCHES THE INTERIOR. SO THE PINK LAYER CERTAINLY ISN'T DISPOSED ON THE INTERIOR, BUT YET IT'S WHAT MAKES THIS ELECTRICAL CONNECTION, WHICH BRINGS US TO THE NEXT IMPORTED LIMITATION IN THIS CLAIM, WHICH IS THERE HAS TO BE TOUCHING, PHYSICAL TOUCHING OF THE EXTERNAL-MOST PORTION TO THESE PLATES. WELL, YOU CAN SEE AGAIN THIS WHOLE CONCEPT OF

THE LAYERING BUILD-UP WOULD REMOVE SOMEONE FROM THE SCOPE OF THIS CLAIM IF IT HAD TO BE A SINGLE LAYER, IF THERE HAD TO BE PHYSICAL TOUCHING, AND IF IT WOULD HAVE TO BE THIS DIRECT ARRANGEMENT ON THE EXTERNAL SURFACE.

SO THAT'S WHY WE TAKE THE APPROACH AS WE DO IN OUR PROPOSED DEFINITION THAT IS COMPLETELY CONSISTENT WITH THE SPECIFICATION AND, MOREOVER, DOESN'T VIOLATE THIS PRINCIPLE OF IMPORTING LIMITATIONS THAT AREN'T SUPPORTED BY THE SPECIFICATION. THERE'S NOTHING IN THE CLAIMS THAT SAY AT ALL THAT THIS HAS TO BE A SINGLE LAYER, NOR THAT THERE HAS TO BE PHYSICAL CONTACT. YOU CAN IMAGINE THAT PROJECTOR SITTING THERE IS ELECTRICALLY CONNECTED TO THE OUTLET IN THE WALL --

THE COURT: OKAY, LET ME TRY AND GO BACK. PRESIDIO'S POSITION IS THAT IT DOESN'T HAVE TO BE A SINGLE LAYER; IT CAN BE MULTIPLE LAYERS.

MR. AHRENS: RIGHT.

THE COURT: GO AHEAD.

MR. AHRENS: AND SO IT'S A MATERIAL.

THE COURT: IT'S A MATERIAL.

MR. AHRENS: IT COULD BE FORMED IN THE TECHNIQUES THAT ARE USED IN THE INDUSTRY, AND IT DOESN'T HAVE TO BE THE SINGLE LAYER, AND BECAUSE OF THAT, THE EXTERIOR-MOST PORTION, WHICH IS WHAT IS DIRECTLY LINKED TO THE CIRCUIT BOARD THROUGH SOLDERING OR OTHER CONNECTION --

THE COURT: SO THE EXTERIOR-MOST PORTION WOULD BE THE

OUTERMOST LAYER?

MR. AHRENS: IF IT WAS (PAUSE) --

THE COURT: IF IT WERE LAYERED. I MEAN, I GUESS IF THERE WERE MULTIPLE LAYERS, BUT YOU'RE SAYING, COULD IT BE ONE, SO ARE YOU SAYING THAT IT COULD BE ONE LAYER OR MULTIPLE LAYERS?

MR. AHRENS: RIGHT.

THE COURT: IT COULD BE EITHER?

MR. AHRENS: IT COULD BE EITHER. IT'S NOT LIMITED TO A SINGLE LAYER.

THE COURT: OKAY, AND THE EXTERIOR, GO BACK TO WHAT YOU WERE SAYING ABOUT THE EXTERIOR-MOST PORTION.

MR. AHRENS: OKAY. SO IN THE CONNECTION OF THIS KIND OF A DEVICE TO THE ACTUAL PRINTED CIRCUIT BOARD, THERE HAS TO BE, YOU KNOW, YOU HAVE TO ATTACH IT AND IT'S ATTACHED BY THE SOLDERING TECHNIQUE. SO IF YOU'RE GOING TO DO THAT, THAT CONNECTING SOLDER, IF YOU WILL, OR WIRE HAS TO TOUCH SOMETHING. I MEAN, IT'S KIND OF LIKE THE CORD THAT GOES TO THAT PROJECTOR, AND THIS WAS MY, THE POINT I WAS ATTEMPTING TO MAKE, IS THAT THE CLAIM LANGUAGE, I MEAN, WE HAVE TO REMEMBER THAT IT'S THE CLAIM LANGUAGE WHERE WE START THAT SAYS THAT THE CONDUCTIVE FIRST CONTACT IS ELECTRICALLY CONNECTED TO THE FIRST PLATE, ELECTRICALLY CONNECTED. SO DOES ELECTRICALLY CONNECTED REQUIRE, AS THEY SAY, TOUCHING? I DARE SAY NO, BECAUSE THIS PROJECTOR WOULDN'T WORK IF IT WASN'T ELECTRICALLY CONNECTED TO

THE OUTLET, BUT IT'S NOT PHYSICALLY CONNECTED TO THE OUTLET, YET IT'S ELECTRICALLY CONNECTED TO THE OUTLET, AND AGAIN --

THE COURT: MY LAW CLERK AND I WENT BACK AND FORTH ABOUT THIS, TOUCHING AND NOT TOUCHING, BUT GO AHEAD.

MR. AHRENS: SO THERE IS CERTAINLY SOMETHING THAT MAKES THE ELECTRICAL CONNECTION, AND IT CAN BE, YOU KNOW, THIS INTERVENING OUTER LAYER, IF YOU WILL, OR THE CORD, OR WHATEVER IT MIGHT BE, BUT THERE DOESN'T HAVE TO BE PHYSICAL CONNECTION FOR THERE TO BE ELECTRICAL CONNECTION, AT LEAST NOT DIRECTLY. INDIRECTLY, THERE'S A PHYSICAL CONNECTION, BUT NOT DIRECTLY.

SO, I MEAN, IT ALL ROLLS INTO KIND OF THE ISSUE OF, THERE DOESN'T HAVE TO BE A SINGLE LAYER, AND SO THERE CAN BE A BUILD-UP. THIS IS A CLAIM THAT HAS COMPRISING AS THE PREAMBLETORY TRANSITIONAL PHRASE, WHICH IS A COMPLICATED WAY OF SAYING THAT IT'S AN OPEN-ENDED CLAIM AND THERE'S NOTHING TO LIMIT FOR THERE BEING MULTIPLE LAYERS, SO. AND BECAUSE OF THAT, IF THERE ARE MULTIPLE LAYERS, IT WOULD BE THE OUTERMOST ONE OF THOSE THAT WOULD MAKE THE ELECTRICAL CONNECTION TO THE FIRST, OR ONE OF THOSE THAT WOULD MAKE THE CONNECTION TO THE PLATE, BUT IT MAY BE A DIFFERENT PORTION OF THAT THAT WOULD BE CONNECTED TO THE CIRCUIT BOARD, AND, YOU KNOW, THERE'S AN ELECTRICAL CONNECTION BECAUSE OF THE COMMONALITY OF THE MATERIAL.

THE COURT: WHAT SUPPORT DO YOU HAVE FOR YOUR INTERPRETATION OF THE CLAIM, OR THIS TERM? I MEAN, OBVIOUSLY, IT'S JUST BY LOOKING AT FIGURE 10, AND WHAT ELSE?

MR. AHRENS: THE SUPPORT FOR WHY ELECTRICALLY CONNECTED DOESN'T MEAN PHYSICAL TOUCHING?

THE COURT: CORRECT.

MR. AHRENS: WELL, THERE'S NO DESCRIPTION IN THE SPECIFICATION FOR PHYSICAL TOUCHING. IT DOESN'T SAY IT AT ALL. SO IT'S AN ADDITIONAL LIMITATION THAT'S NOT REQUIRED. THE DRAWINGS UNDOUBTEDLY SHOW WHAT COULD BE VIEWED AS A SINGLE LAYER. IT COULD BE MULTIPLE LAYERS OF THE SAME MATERIAL. THERE'S AN INTERESTING DISPUTE ABOUT WHAT THE PATENT LAW DRAWING RULES SHOW WHEN YOU'VE GOT CROSSHATCHING OR THE ANGLED LINES ON A COMPONENT THAT IS SHOWN IN A PATENT DRAWING. SO IT REPRESENTS A MATERIAL, AND IT'S THE SAME ANGLED CROSS-SECTION BECAUSE IT'S THE SAME PART, COMPONENT. IT DOESN'T MEAN IT'S NOT LAYERS OF MATERIAL THAT ARE BUILT UP. THERE'S NOTHING IN THE PATENT RULES THAT SAY THAT.

AND I WOULD POINT YOU TO OR CITE YOU TO -- EXCUSE ME -- THE FACT THAT THE C.F.R., THE CODE OF FEDERAL REGULATIONS, FOR PATENTS, 1.84, PAGE 3, THE VARIOUS PARTS OF A CROSS-SECTION OF THE SAME ITEM SHOULD BE HATCHED IN THE SAME MANNER. IT DOESN'T MEAN THAT OTHER MATERIALS OR STRUCTURES CAN'T BE INCLUDED. IT MEANS, IF YOU WERE PAINTING A WALL AND YOU PAINTED THE FIRST LAYER, THEN YOU PAINT A SECOND LAYER, THEN YOU PAINT A THIRD LATER, THEN YOU PAINT A FOURTH LAYER, AND THEN YOU'RE GOING TO SHOW A CROSS-SECTION, YOU WOULD SHOW

ALL THE PAINT AS ONE THING. YOU WOULDN'T SHOW ALL THE LAYERS OF PAINT. IT'S JUST BUILD-UP OF MATERIAL. IT'S THE SAME THING, SO.

THE COURT: THERE'S NO DISPUTE ABOUT WHAT THE TERM OR THE WORD PLATE MEANS, OR IS THERE?

MR. AHRENS: NO.

THE COURT: I DON'T THINK THERE IS, BECAUSE I THINK BOTH PROPOSED CONSTRUCTIONS USE THE TERM PLATE.

MR. AHRENS: RIGHT. IT COMES, IT'S IN THE CLAIM TERM THAT'S IN DISPUTE AND IT'S IN BOTH DEFINITIONS, AND WE DIDN'T ADDRESS THAT THAT WAS AN ISSUE.

THE COURT: RIGHT.

MR. AHRENS: AND THAT'S THE INTERNAL DARKER LINES THAT ARE EMBEDDED INTO THE CERAMIC BODY.

THE COURT: OKAY. SO HOW DOES YOUR DEFINITION OF THIS TERM DIFFER FROM ATC'S?

MR. AHRENS: WELL, IN THREE RESPECTS, REALLY, BECAUSE THERE ARE PURPOSES AND FUNCTIONS OF THE CONDUCTIVE FIRST CONTACT, AND THERE'S NO DOUBT THAT THERE ARE SEVERAL OF THOSE FUNCTIONS AND PURPOSES THAT ARE DESCRIBED AND SHOWN IN THE PATENT. THE CLAIM DOESN'T REQUIRE THOSE, HOWEVER, BUT ATC'S DEFINITION IS TRYING TO BRING THOSE FUNCTIONS AND PURPOSES AND MAKE THEM LIMITATIONS OF THE CLAIM. SO THIS IS THE CLASSIC EXAMPLE OF IMPORTING THE LIMITATIONS IN VIOLATION OF STANDARD CLAIM-CONSTRUCTION PRINCIPLES WHICH SAY, JUST BECAUSE SOMETHING

IS SHOWN IN THE DRAWINGS, JUST BECAUSE SOMETHING IS DESCRIBED IN THE SPECIFICATION, IF IT'S NOT IN THE CLAIM, THERE'S NO BASIS IN THE LAW TO IMPORT THAT LIMITATION.

THEY MIGHT AS WELL SAY THAT, YOU KNOW, THE CLAIM IS LIMITED TO THE 16 PLATES THAT ARE SHOWN BECAUSE, BY GOLLY, THERE'S 16 PLATES SHOWN, SO THIS CLAIM SHOULD BE LIMITED TO 16 PLATES. YOU KNOW, THERE'S JUST, DRAWINGS ARE SHOWN AS EXEMPLARY EMBODIMENTS, AND TO LIMIT THE SPECIFICATION OR -- EXCUSE ME -- THE CLAIMS TO ANY PARTICULAR EMBODIMENT IS JUST, IT VIOLATES THE PRINCIPLES OF PATENT LAW, AND, I MEAN, I WON'T BORE YOU WITH ALL THE CITATIONS, BUT IT IS IN OUR BRIEF --

THE COURT: YES.

MR. AHRENS: -- IN PRETTY STRONG LANGUAGE, BECAUSE THE FEDERAL CIRCUIT USES STRONG LANGUAGE TO ADMONISH PEOPLE NOT TO TRY TO IMPORT LIMITATIONS, AND THE REASON THAT THEY DO IT, AS YOU CAN GUESS, IS, THEY THINK, WELL, WE CAN GET THE CLAIM, HAVE THESE ADDITIONAL LIMITATIONS IN IT, AND THEN, BY GOLLY, AS SOON AS WE GET THAT CLAIM CONSTRUCTION, WE CAN RUN ALONG AND SAY, WE DON'T INFRINGE BECAUSE WE DON'T HAVE THOSE LIMITATIONS. IT'S A CLASSIC SITUATION AND IT'S EXACTLY WHAT'S HAPPENING HERE, WE BELIEVE. I DON'T KNOW EXACTLY WHY, BUT THAT'S WHAT WE BELIEVE.

THE COURT: SO THE THREE DIFFERENCES, THEN.

MR. AHRENS: LAYER VS. MATERIAL.

THE COURT: OKAY.

MR. AHRENS: THE FUNCTION OF FOR ATTACHING THE

CAPACITOR TO AN EXTERNAL CONDUCTOR.

THE COURT: WHAT DO YOU MEAN?

MR. AHRENS: IT'S THIS HIGHLIGHTED PART HERE.

THE COURT: RIGHT.

MR. AHRENS: THAT'S IN THEIR DEFINITION IN BLUE. I MEAN, IT MAY VERY WELL SERVE THAT PURPOSE, BUT THAT DOESN'T HAVE TO BE A LIMITATION IN THE CLAIM JUST BECAUSE IT'S SHOWN IN THAT DRAWING THAT WAY. I GUESS THAT'S OUR POINT, BUT IT DOES TIE BACK TO THE ISSUE OF LAYER, BECAUSE IF YOU AREN'T LIMITED TO A LAYER, THEN YOU MAY HAVE DIFFERENT PORTIONS OF THE CONDUCTIVE MATERIAL FUNCTIONING FOR ATTACHING THE CAPACITOR TO AN EXTERNAL CONDUCTOR.

I HAVE A FEELING THAT I STILL HAVEN'T MADE THIS VERY CLEAR TO YOU.

THE COURT: I UNDERSTAND THE LAYER VS. MATERIAL.

MR. AHRENS: OKAY.

THE COURT: GO OVER THE SECOND DIFFERENCE THAT YOU BELIEVE IS THERE.

MR. AHRENS: FOR ATTACHING THE CAPACITOR TO AN EXTERNAL CONDUCTOR. SO YOU'VE GOT IN THIS FIGURE 10-A, WHICH IS THE EXAMPLE, A SITUATION WHERE, AND WE'LL JUST LOOK, WE CAN LOOK AT 11-A FOR THIS PURPOSE BECAUSE I'VE ALREADY MARKED ALL OVER 10-A. YOU'VE GOT THIS ELEMENT HERE. I'M GOING TO JUST HIGHLIGHT IT IN PINK. OKAY, SO LET'S JUST SAY, OR THIS IS THE CONDUCTIVE MATERIAL. SO THIS CONDUCTIVE MATERIAL TOUCHES THESE

PLATES. IT'S ELECTRICALLY IN CONNECTION WITH THESE PLATES, AND THEN IT'S GOING TO BE CONNECTED TO THE CIRCUIT BOARD. OKAY, SO IT'S GOING TO HAVE THIS FUNCTION OF BEING IN ELECTRICAL CONNECTION WITH THE PLATE AND BEING PRESENT TO, PRESENT TO, TO MAKE THE CONTACT WITH THE CIRCUIT BOARD. OKAY?

THE CLAIM DOESN'T SAY THAT. I MEAN, THAT'S WHAT'S SHOWN ON HERE. THE CLAIM SAYS THE CONDUCTIVE FIRST CONTACT IS EXPOSED EXTERNALLY ON THE DIELECTRIC BODY AND IT'S ELECTRICALLY CONNECTED TO THE FIRST PLATE. THAT'S ALL IT REQUIRES. IT DOESN'T HAVE THIS OTHER REQUIREMENT THAT IT DO THIS FUNCTION OF MAKING THE CONTACT WITH THE CIRCUIT BOARD. IN PRACTICAL APPLICATION, IT DOES THAT, BUT IT'S NOT A REQUIREMENT OF THE CLAIM, AND SO BY IMPORTING INTO THE CLAIM THIS LIMITATION THAT THE CONDUCTIVE LAYER IS FOR ATTACHING TO AN EXTERNAL CONDUCTOR, ALL OF A SUDDEN YOU'VE PUT A LIMITATION THAT SOMEBODY COULD USE TO TRY TO AVOID THE SCOPE OF THE CLAIM AS IT WAS DRAFTED AND AS IT WAS ISSUED BY THE PATENT OFFICE. I MEAN, TO ME, IT'S A CLASSIC CASE OF A LIMITATION FROM A SPECIFICATION AND THE DRAWINGS THAT'S BEING PUT INTO THE CLAIMS FOR NO JUSTIFIABLE REASON.

THE COURT: OKAY. I THINK I'VE GOT IT, AND WHAT ABOUT THE -- YOU SAID THERE WERE THREE DIFFERENCES.

MR. AHRENS: YES. SO THE THIRD ONE IS THE BOTTOM THAT'S IN GREEN, WHICH IS TOUCHING THE CONDUCTIVE FIRST PLATE TO ESTABLISH ELECTRICAL CONNECTION. OKAY. SO, AGAIN -- SORRY

TO KEEP JUMPING AROUND ON THESE THINGS, BUT IN THE DRAWING --

THE COURT: THAT'S OKAY.

MR. AHRENS: -- AS I POINTED OUT, IT SHOWS THAT THIS ELEMENT 12 DOES PHYSICALLY TOUCH THE PLATE. THAT'S WHAT I MEAN BY THIS LITTLE LINE THAT SHOWS HOW THOSE TWO ARE IN PHYSICAL CONTACT. DO YOU SEE THAT? I'M SORRY.

THE COURT: YES. I'VE GOT THE DRAWING HERE. SO, GO OVER THAT AGAIN. I SEE ELEMENT 12.

MR. AHRENS: ELEMENT 12 AND THE TERMINATION OF THOSE LONG, DARK LINES.

THE COURT: YES. THE PLATES?

MR. AHRENS: YES. SOME OF THEM COME FROM ONE EDGE, AND THE OTHER ONES COME IN FROM THE OTHER EDGE.

THE COURT: YES.

MR. AHRENS: AND THEY'RE INTERLEAVED, OR INTERWOVEN, AND THE ONES THAT COME IN FROM THE LEFT ARE PHYSICALLY TERMINATED AT THE OUTSIDE EDGE OF THE CERAMIC MATERIAL, AND SO THEY PHYSICALLY TOUCH THAT CONTACT AS WELL. OKAY, THE CLAIM SAYS THAT THE CONDUCTIVE FIRST CONTACT IS ELECTRICALLY CONNECTED. THAT'S THE PHRASE WE'RE TRYING TO DEFINE, ELECTRICALLY CONNECTED. SO LET'S ASSUME YOU PUT A LAYER BETWEEN 12 AND THOSE PLATES, BUT IT'S A CONDUCTIVE MATERIAL. IT'S THE SAME MATERIAL. IT'S JUST A SECOND LAYER OF THAT MATERIAL. YOU'RE GOING TO HAVE ELECTRICAL CONNECTION BETWEEN THAT MATERIAL AND THE PLATE, BUT YOU'RE NOT GOING TO HAVE

PHYSICAL TOUCHING, WHICH IS WHAT ATC IS SEEKING TO PUT INTO THE CLAIM.

SO THAT'S THE DIFFERENCE AND THAT'S WHY IT TIES BACK TO THE ISSUE OF A LAYER, BECAUSE IF YOU HAD A SECOND LAYER, AN INTERVENING LAYER, THEN THE OUTER LAYER WOULDN'T BE PHYSICALLY TOUCHING THE PLATE, BUT YET IT WOULD BE IN ELECTRICAL CONNECTION WITH THE PLATE, AND SO, IN OUR VIEW, THAT WOULD BE EXACTLY WHAT THE CLAIM WOULD COVER, AND ATC IS SEEKING TO AVOID THAT.

THE COURT: SO PRESIDIO'S POSITION IS THAT THAT OUTER LAYER, 12, DOESN'T HAVE TO IN ALL CASES BE PHYSICALLY TOUCHING (PAUSE) --

MR. AHRENS: THE PLATES.

THE COURT: -- THE PLATES.

MR. AHRENS: RIGHT, AS LONG AS IT'S, AS THE CLAIM SAYS, ELECTRICALLY CONNECTED TO THE PLATES. THAT'S WHAT THE CLAIM LANGUAGE SAYS. IT ALMOST DOESN'T NEED TO BE CONSTRUED, IT'S SO CLEAR. ELECTRICAL CONNECTION, DIFFERENT WORD, PHYSICAL CONNECTION, TWO DIFFERENT WORDS, TWO DIFFERENT CONCEPTS. THE CLAIM SAYS ELECTRICALLY CONNECTED. IT DOESN'T SAY PHYSICALLY CONNECTED. IT JUST SHOWS AN EXAMPLE OF SOMETHING THAT IS PHYSICALLY CONNECTED, BUT THAT DOESN'T MEAN IT HAS TO BE PHYSICALLY CONNECTED.

THE COURT: OKAY. I'M JUST WRITING ON THIS LITTLE DRAWING HERE.

MR. AHRENS: TAKE YOUR TIME.

THE COURT: OKAY. SO DOES THAT TAKE CARE OF THE SECOND TERM?

MR. AHRENS: IF YOU'RE SATISFIED, I AM.

THE COURT: YES, AND THE THIRD TERM IS DEPENDENT ON THE SECOND TERM. CORRECT? I MEAN, IT'S JUST, THERE'S REALLY NO DIFFERENCE OTHER THAN IT'S (PAUSE) --

MR. AHRENS: RIGHT. THEY'RE ESSENTIALLY --

THE COURT: THE SECOND CONTACT BEING --

MR. AHRENS: THE ONE OR THE OTHER SIDE.

THE COURT: RIGHT.

MR. AHRENS: TWELVE AND 13 AS AN EXAMPLE. SO THE PROPOSED DEFINITIONS I DON'T THINK CHANGE.

THE COURT: OKAY.

MR. AHRENS: I BELIEVE YOU WERE INTERESTED IN SIX, WHICH IS THE HEXAHEDRON SHAPE.

THE COURT: NO. LET'S SEE. SIX, WE CAN WAIT ON.

WHAT ABOUT (PAUSE) -- I'M TRYING TO THINK HERE. LET'S GO TO FOUR.

MR. AHRENS: FOUR AND FIVE ARE KIND OF LIKE TWO AND THREE IN THAT THEY'RE ESSENTIALLY --

THE COURT: RIGHT.

MR. AHRENS: -- THE SAME.

THE COURT: LET'S GO TO FOUR, AND THEN YOU CAN GO TO SIX.

MR. AHRENS: OKAY. SO THIS IS A SITUATION WHERE THE, AND AGAIN I GUESS I'LL REFER YOU TO FIGURE 11 BECAUSE THAT, THAT'S AN EXAMPLE OF THE SITUATION. IF YOU LOOK AT FIGURE 11, YOU'VE GOT THE TERMINATION POINTS OF THIS ELEMENT. I GUESS I SHOULD USE A DIFFERENT COLOR. THAT ELEMENT AND THAT ELEMENT.

THE COURT: SO WE'RE TALKING ABOUT -- LET ME JUST MAKE SURE WHAT WE'RE TALKING ABOUT -- THE SECOND CONTACT BEING LOCATED SUFFICIENTLY CLOSE TO THE FIRST CONTACT. IS THAT WHAT WE'RE TALKING ABOUT?

MR. AHRENS: YES.

THE COURT: TO FORM A FIRST FRINGE-EFFECT CAPACITANCE WITH THE FIRST CONTACT.

MR. AHRENS: CORRECT.

THE COURT: OKAY.

MR. AHRENS: SO THE FIRST AND SECOND CONTACTS ARE THESE TWO BLUE ELEMENTS.

THE COURT: ALL RIGHT.

MR. AHRENS: AND THERE'S A GAP BETWEEN THEM.

THE COURT: YES.

MR. AHRENS: AND THE GAP -- FIGURE 11-B IS THE CIRCUIT DIAGRAM THAT CORRELATES TO THIS DRAWING. SO ELEMENTS 72 AND -4 ARE HERE, 72 AND 74, AND THERE'S A CAPACITOR SYMBOL. THAT'S THE ELECTRICAL SYMBOL, YOU KNOW, THE UNIVERSAL SYMBOL FOR A CAPACITOR. SO THAT'S THE FRINGE-EFFECT CAPACITANCE. IT'S DESCRIBED ALSO IN CONNECTION WITH FIGURE 10-A. IT'S GOT THE

SAME KIND OF ARRANGEMENT. ELEMENT 79 HERE IS THE FRINGE-EFFECT CAPACITANCE.

SO THERE'S A COUPLE POINTS OF DISPUTE HERE. ONE IS, OUR PROPOSED DEFINITION IS THAT THE CAPACITANCE IS FORMED BY THESE ADJACENT PLATES, AND WE SAY BETWEEN OR PROXIMATE THE OPPOSED ENDS OF THE FIRST AND SECOND CONDUCTIVE CONTACTS, AND THE FRINGE-EFFECT CAPACITANCE, THE DEFINITION IS THE CAPACITANCE WHICH AFFECTS THE HIGH-FREQUENCY PERFORMANCE OF THE CAPACITOR AS A WHOLE.

YOU CAN IMAGINE IN THIS EXTERIOR COMPLEX ARRAY THERE ARE CAPACITANCES IN VARIOUS PLACES THROUGHOUT THIS DEVICE. WE HAVE CAPACITANCES IN MANY DIFFERENT LOCATIONS, AND THEY CAN BE TUNED TO HAVE DIFFERENT CAPACITANCE VALUES, AND THIS FINE-TUNING OF THE CAPACITANCE VALUES SO THAT THEY FUNCTION AT SPECIFIC FREQUENCIES OR DON'T MALFUNCTION AT SPECIFIC FREQUENCIES ALLOWS YOU TO HAVE A VERY BROADBAND CAPACITOR, WHICH IS WHAT THIS PATENT IS CALLED. AND BECAUSE OF THAT AND AS SHOWN IN THAT FIGURE 21, THAT SMOOTH CURVE, 21-B, BECAUSE OF THE INCLUSION OF THE MULTIPLE DIFFERENT CAPACITANCES IN THIS CAPACITOR ARRAY, INCLUDING THE FRINGE-EFFECT CAPACITANCE THAT I JUST DESCRIBED, IT ALLOWS YOU TO HAVE IMPROVED HIGH-FREQUENCY PERFORMANCE.

HIGH FREQUENCY IS DESCRIBED IN THE PATENT AS BEING IN THE GIGAHERTZ RANGE. SO, YOU KNOW, THE SPECTRUM OF LOW KILOHERTZ NUMBERS TO GIGAHERTZ NUMBERS. HIGH FREQUENCY, I

WOULD POINT TO THE PART OF THE SPECIFICATION WHERE IT SAYS HIGH FREQUENCY, PARENTHETICALLY, GIGAHERTZ. SO THAT'S THE RANGE WE'RE TALKING ABOUT WHEN YOU INCLUDE THE FRINGE-EFFECT CAPACITANCES FORMED BETWEEN THOSE ADJACENT PLATES.

WHEN YOU LOOK AT PLATES THAT ARE GENERALLY IN THIS KIND OF RELATIONSHIP HERE, YOU'RE GOING TO HAVE CAPACITANCES IN THIS SORT OF A, ALMOST LIKE A MAGNETIC FIELD. IT DOESN'T JUST GO ACROSS IN A STRAIGHT LINE. SO THAT'S WHY WE PUT IN THE DEFINITION BETWEEN OR PROXIMATE OPPOSED ENDS, BECAUSE THE CAPACITANCE THAT'S OUT IN THESE REGIONS ISN'T GOING TO BE NECESSARILY PHYSICALLY BETWEEN, BUT IT'S PROXIMATE THE END.

I THINK THIS IS ACTUALLY SHOWN IN ONE OF THE EXHIBITS OF ATC. I DON'T KNOW WHICH EXHIBIT NUMBER IT IS, BUT IT SHOWS PARALLEL PLATES OR THE END-TO-END RELATIONSHIP WHEN YOU'VE GOT THE FIELD OF CAPACITANCE THAT IS SHOWN, AND IT'S IN THE APPROXIMATE REGION OF THE ENDS OF THE PLATES. WELL, ATC WANTS (PAUSE) --

THE COURT: OF COURSE, THEY'RE OBJECTING ON INDEFINITENESS GROUNDS, AREN'T THEY, ON THIS ONE?

MR. AHRENS: YES, THEY DO, AND IT'S NOT REALLY CLEAR WHAT THE ARGUMENT IS THERE, BECAUSE THE PATENT TELLS US WHAT HIGH FREQUENCY IS. THE PATENT DESCRIBES, AND I CAN TELL YOU SEVERAL LOCATIONS WHERE. FOR EXAMPLE, SUFFICIENTLY CLOSE. THE PATENT AT COLUMN 10, LINE 9, GIVES AN EXAMPLE OF THE DISTANCE BETWEEN THE PLATES AS 2/1000THS OF AN INCH, .002. YOU KNOW, AN

EXAMPLE OF A NUMERICAL LIMITATION ISN'T SOMETHING TO BE PUT IN THE CLAIMS. CLAIMS DON'T NEED TO BE LIMITED TO A 2/1000THS-OF-AN-INCH GAP BETWEEN THE PLATES. IT'S JUST AN EXAMPLE.

AND AS WE TALKED EARLIER ABOUT WHO IS A PERSON HAVING ORDINARY SKILL IN THE ART, IT'S SOMEBODY WHO'S EITHER GOING TO BE MAKING OR USING THESE DEVICES. WHO'S GOING TO BE MAKING THESE DEVICES FOR A PARTICULAR PURPOSE IS GOING TO UNDERSTAND, AND WE HAVEN'T HEARD ANY CONTRARY TESTIMONY, THAT THEY NEED TO FINE-TUNE THIS, AND THIS FINE-TUNING I'M TALKING ABOUT IS DESCRIBED IN THE PATENT IN SEVERAL LOCATIONS, ACTUALLY.

THE GAP, AS I SAID, IS INDICATED AS .002, 2/1000THS OF AN INCH. THAT'S AT COLUMN 10, LINE 9. THE FREQUENCY SPECTRUM AT WHICH THESE DEVICES CAN OPERATE IS A SUBSTANTIAL BANDWIDTH. FOR EXAMPLE, 400 KILOHERTZ TO A HUNDRED GIGAHERTZ. THAT'S COLUMN 11, LINE 66. IT'S ALSO INDICATED AT COLUMN 2, LINES 55 THROUGH 57, GOOD HIGH-FREQUENCY PERFORMANCE, PARENTHETICALLY, REDUCED RESISTANCE AND INDUCTANCE. SO HIGH-FREQUENCY PERFORMANCE IS DEFINED AS REDUCED RESISTANCE AND INDUCTANCE.

AND ALSO, AS WE TALKED ABOUT BEFORE, AND THIS IS SHOWN IN FIGURES 21-A AND -B AND ALSO DESCRIBED IN CONNECTION WITH OR AT COLUMN 7, LINES 3 THROUGH 20, THE INSERTION LOSS THAT'S OBTAINED WHEN YOU INSERT A CAPACITOR INTO A CIRCUIT, AND FIGURE 21-B, A QUOTE FROM THE PATENT, FIGURE 21-B -- THIS IS COLUMN 7, LINE 7 -- ILLUSTRATES A PLOT OF INSERTION LOSS AS A FUNCTION OF

FREQUENCY FOR THE BROADBAND CAPACITOR ILLUSTRATED IN FIGURE 9-A. AS CAN BE SEEN, THE INSERTION LOSS IS RELATIVELY SMOOTH THROUGHOUT A BROAD RANGE OF FREQUENCIES. IN THE EXAMPLE OF FIGURE 9-A, THE BULK CAPACITANCE IN THE LARGER-VALUE LOW-FREQUENCY UPPER SECTION 60 CAN BE MADE TO HAVE A CAPACITANCE IN THE RANGE OF ABOUT TEN TO A HUNDRED NANOFARADS. FURTHER, IF THE CAPACITANCE IN THE LOWER-VALUE HIGH-FREQUENCY LOWER SECTION 62 IS MADE TO HAVE A CAPACITANCE OF ABOUT 82 PICOFARADS, THE INSERTION LOSS PLOT IN FIGURE 21-B IS RELATIVELY SMOOTH OVER A FREQUENCY RANGE OF ABOUT TEN KILOHERTZ TO TEN GIGAHERTZ AND HIGHER. SO WE KNOW THE HIGH FREQUENCY IS GIGAHERTZ BECAUSE THAT'S IN COLUMN 2.

WE KNOW THAT THE AFFECTING THE HIGH-FREQUENCY PERFORMANCE, WHICH IS MENTIONED IN OUR BRIEF, AND THERE ARE CITES THROUGHOUT THE SPECIFICATION FOR THE FRINGE-EFFECT CAPACITANCE AFFECTING THE HIGH-FREQUENCY PERFORMANCE. THERE ARE LITERALLY AT LEAST FIVE OR SIX PLACES IN THE PATENT SPECIFICATION THAT USE THAT EXACT LANGUAGE. SO OUR PROPOSED DEFINITION OF FRINGE-EFFECT CAPACITANCE --

DO YOU WANT ME TO CITE YOU TO THAT?

THE COURT: NO; THAT'S FINE.

MR. AHRENS: (CONTINUING) -- COMES DIRECTLY FROM THE SPECIFICATION WORD FOR WORD.

WHAT WE DON'T HAVE IN THIS CLAIM IS A NUMERICAL LIMITATION FOR HOW BIG THE GAP NEEDS TO BE, BECAUSE THE GAP

WILL VARY DEPENDING ON THE PARTICULAR APPLICATION TO WHICH THE PERSON SKILLED IN THE ART IS INTENDING TO PUT THE DEVICE. I MEAN, IF THEY WANT TO OPERATE AT, YOU KNOW, 10.8 GIGAHERTZ AND TUNE IT SO THAT THE CAPACITANCE DOESN'T RESULT IN INSERTION LOSS AND DATA DROPPING AT THAT LEVEL, THEY'LL ADJUST THE DISTANCE. BUT MANY OF THESE ARGUMENTS, ESPECIALLY THE ONES ON INDEFINITENESS, REALLY MORE GO TO INFRINGEMENT OR NON-INFRINGEMENT. YOU KNOW, WE DON'T INFRINGE OR WE WOULDN'T INFRINGE, BUT WE DON'T KNOW HOW, WHETHER WE WOULD INFRINGE OR NOT, AND THAT'S NOT WHY WE'RE HERE. IT'S IMPROPER TO GIVE CONSIDERATION TO THE ACCUSED PRODUCT AS PART OF THE DISCUSSION ABOUT THE CLAIMS INTERPRETATION.

THE COURT: RIGHT. SO, THEN, THE SECOND CONTACT -- I'M SORRY. WELL, WE'RE STILL TALKING ABOUT THE SECOND CONTACT BEING LOCATED SUFFICIENTLY CLOSE TO THE FIRST CONTACT, AND THEN THE SECOND CONTACT BEING SUFFICIENTLY CLOSE TO THE FIRST CONTACT ON THE SECOND SIDE. SO THOSE TWO ARE DEPENDENT ON EACH OTHER. IS THAT CORRECT?

MR. AHRENS: YES. IT'S A SITUATION WHERE, AND I'M NOT SURE IF IT'S EITHER OF THESE FIGURES HERE. I BELIEVE IT'S IN A LATER FIGURE WHERE (PAUSE) -- THIS IS AN EXAMPLE, I THINK.

THE COURT: THE SECOND SIDE BEING...?

MR. AHRENS: YOU'VE GOT THIS GAP HERE AND YOU'VE GOT ANOTHER ONE HERE.

THE COURT: YES.

MR. AHRENS: SO IT'S TALKING ABOUT THIS GAP AND THIS CAPACITANCE AND THIS GAP AND THIS CAPACITANCE AS THE FIRST AND SECOND ONES.

THERE WAS SOMETHING RAISED ABOUT USE OF THE WORD DISPOSED ON. LIKE, HOW CAN CAPACITANCE BE DISPOSED ON ONE SIDE OR THE OTHER? JUST AS POINTED OUT IN THAT FIGURE, IT'S EITHER ON ONE SIDE OR IT'S ON THE OTHER SIDE, JUST A PHYSICAL DIFFERENTIATION BETWEEN WHERE THE FRINGE-EFFECT CAPACITANCE BECAUSE OF THE FIRST AND SECOND PLATES ON THE TOP VS. THE FRINGE-EFFECT CAPACITANCE OF THE FIRST AND SECOND PLATES ON THE BOTTOM. THERE'S JUST, THERE'S TWO DIFFERENT FRINGE-EFFECT CAPACITANCES THAT ARE INVOLVED, OR THERE CAN BE. THERE DON'T HAVE TO BE. IT DOESN'T HAVE TO BE.

THE COURT: OKAY. LET'S GO TO THE HEXAHEDRON SHAPE.

MR. AHRENS: WELL, WE DON'T HAVE A REALLY LARGE DIFFERENCE IN OUR PROPOSED DEFINITIONS.

THE COURT: RIGHT. IT'S SIDES VS. SURFACES. CORRECT?

MR. AHRENS: YES. WE SAY SIX MAJOR SURFACES AND THEY SAY SIX SIDES. AGAIN, IF WE LOOK AT THE PROPOSED --

THE COURT: WHAT DO YOU MEAN BY SURFACE? I KNOW WHAT SIDE MEANS, BUT WHAT ABOUT, WHAT DO YOU MEAN BY SURFACES?

MR. AHRENS: FOR EXAMPLE, LOOKING AT, AGAIN, I'M USING FIGURE 10-A, AND THESE THINGS ARE VERY SMALL. I MEAN, YOU KNOW, THE SIZE OF MY LITTLE FINGERNAIL OR SMALLER. SO IT'S HARD TO JUST HOLD ONE UP AND SHOW IT TO YOU, BUT THINK OF A

CUBE, LIKE A SUGAR CUBE OR A DICE OR A DIE, MAYBE MORE RECTANGULAR THAN THAT, BUT ESSENTIALLY IT'S GOT SIX SIDES TO IT, SIX SURFACES.

THE COURT: CORRECT.

MR. AHRENS: BUT HERE, BECAUSE YOU'VE GOT SOME OF THESE ADDITIONAL LAYERS, YOU'RE GOING TO HAVE LITTLE, SMALL AREAS WHERE IT'S NOT EXACTLY JUST LIKE THAT TABLE. IT WOULD BE MORE LIKE, YOU KNOW, HERE, THIS IS THE SURFACE OF THIS, BUT THERE HAPPENS TO BE THIS GROOVE IN IT. WELL, I DON'T THINK IT WOULD BE TOO ILLOGICAL TO SAY THIS HAS ONE, I WOULD SAY ONE, TWO, THREE SIDES. SOMEBODY ELSE MIGHT SAY ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE, AND THEY WOULD COUNT EVERY LITTLE POSSIBLE NUANCE AND SAY THOSE WERE SIDES.

SO WHAT WE'RE TRYING TO AVOID BY THIS LIMITATION OF ATC IS THAT IT'S SIX SIDES, IT'S JUST SIX SIDES, AND ANY LITTLE BREAK FROM A, YOU KNOW, A PLANAR SURFACE IS ANOTHER SIDE, AND ALL OF A SUDDEN YOU CAN ONLY HAVE SIX. SO WE SAY SIX MAJOR SURFACES BECAUSE IN THE CONTEXT HERE, YOU KNOW, THIS IS A MAJOR SURFACE. THIS IS A MAJOR SURFACE. THIS LITTLE, TINY, LITTLE PIECE THERE, WHICH IS 1/1000TH OF AN INCH IN THICKNESS, THAT'S NOT A MAJOR SURFACE. NO ONE COULD SAY THAT TAKES IT AWAY FROM BEING GENERALLY SIX-SIDED.

THAT'S SORT OF HOW THE PRAGMATICS OF THE DIFFERENCES IN THE DEFINITIONS COME ABOUT. WHY WE THINK OURS IS SUPPORTED AND IT'S CONSISTENT WITH THE LANGUAGE OF THE CLAIM IS BECAUSE

IT SAYS THE DIELECTRIC BODY HAS A HEXAHEDRON SHAPE. IT DOESN'T SAY THAT THE DIELECTRIC BODY IS A HEXAHEDRON, BECAUSE A HEXAHEDRON IS CERTAINLY DEFINED AS SOMETHING THAT HAS SIX SIDES. THERE'S ANOTHER WORD THERE. SO IF YOU CHOOSE TO IGNORE THE WORD SHAPE, THEN YOU MIGHT ARRIVE AT THE DEFINITION PROPOSED, WHICH IS SIX SIDES.

BUT AGAIN THIS GETS BACK TO REALLY MORE OF A NON-INFRINGEMENT ARGUMENT AS OPPOSED TO THE PRACTICAL REALITY, WHICH IS THE CLAIM SAYS HEXAHEDRON SHAPE. IT'S LIKE SAYING THE NICE MEDALLION OVER YOUR HEAD ON THE WALL, THAT HAS A CIRCULAR SHAPE TO IT. IT DOESN'T MEAN IT'S A PERFECT GEOMETRIC CIRCLE. IT JUST MEANS THAT IT'S CIRCULAR IN SHAPE. SO WHEN WE SAY HEXAHEDRON SHAPE IN THE CLAIM, WE MEAN IT'S GOT THE CHARACTERISTICS OF A HEXAHEDRON, WHICH HAS SIX MAJOR SURFACES. IF THERE'S SOME NUANCE, SOME GROOVE, SOME LITTLE UP, YOU KNOW, BUILT-UP LAYER, THAT WOULDN'T BE EXCLUDED BY THE CLAIM, AND TO LIMIT IT TO SIX SIDES AND ONLY SIX SIDES FOR ALL PURPOSES, AS THEY TRY TO PROPOSE, IGNORES THE WORD SHAPE IN THE CLAIM.

AND AGAIN, IT'S A PRINCIPLE OF CLAIM CONSTRUCTION NOT TO IGNORE THE WORDS THAT ARE IN THE CLAIM. YOU CAN'T JUST THROW THEM OUT BECAUSE YOU DON'T LIKE THAT THEY'RE THERE. YOU HAVE TO DEAL WITH THE FACT THAT THE CLAIM LANGUAGE SAYS WHAT IT SAYS, AND IT HAS A MEANING, AND OUR PROPOSED MEANING IS SIX MAJOR SURFACES.

THE COURT: OKAY.

MR. AHRENS: ANY OTHER QUESTIONS?

THE COURT: NO, NOT NOW, BUT I'M SURE I WILL AFTER I HEAR FROM ATC.

MR. AHRENS: THANK YOU VERY MUCH.

THE COURT: OKAY, SO IT'S ATC'S BOOK HERE.

MR. GITTES: GOOD MORNING AGAIN, YOUR HONOR.

THE COURT: GOOD MORNING.

MR. GITTES: THIS IS A PATENT-INFRINGEMENT CASE WHERE PRESIDIO HAS ASSERTED THAT ATC AND, MORE PARTICULARLY, ATC'S 545L CERAMIC CAPACITOR, INFRINGES U. S. PATENT NUMBER 6,816,356, WHICH I'LL REFER TO AS THE '356 PATENT. THEY'VE ASSERTED THAT CLAIMS 1 THROUGH 5, 16, 18, AND 19 ARE INFRINGED. AS THE COURT IS WELL AWARE, TODAY'S MARKMAN HEARING SEEKS THE COURT'S CONSTRUCTION OF SIX CLAIM TERMS WHICH THE PARTIES HAVE IDENTIFIED IN THEIR BRIEFS. FOUR OF THOSE CLAIM TERMS RESIDE IN CLAIM ONE, A FIFTH ONE IN CLAIM THREE, AND A SIXTH ONE IN CLAIM 19.

BEFORE DISCUSSING THESE SIX CLAIM TERMS, I WOULD JUST LIKE TO ALERT THE COURT TO TWO ISSUES, AND I KNOW THE COURT INSTRUCTED US TO SKIP THE STANDING, BUT I RECEIVED YESTERDAY A MOTION TO CONSOLIDATE A SECOND ACTION THAT PRESIDIO HAS FILED WHEN I GOT OFF THE PLANE IN SAN DIEGO. IT HASN'T BEEN SERVED, TO MY KNOWLEDGE. THE COMPLAINT WAS FILED IN FEBRUARY. THERE'S APPARENTLY A SERIOUS STANDING ISSUE, BECAUSE THIS SECOND COMPLAINT IS APPARENTLY IDENTICAL TO THE FIRST COMPLAINT, AND I

SERIOUSLY QUESTION WHY THIS COURT'S VALUABLE ASSETS AND MY CLIENT'S ASSETS ARE BEING SQUANDERED ON AN EARLIER-FILED COMPLAINT WHERE THERE'S OBVIOUSLY A PROBLEM. WE RAISED STANDING FOR THE FIRST TIME IN OUR ANSWER ALMOST A YEAR AGO. WE DID IT --

THE COURT: THIS ONE WAS FILED WHEN?

MR. GITTES: ABOUT A YEAR AGO, YOUR HONOR.

THE COURT: GO AHEAD.

MR. GITTES: IN OUR ANSWER, WE QUESTIONED STANDING. PRESIDIO IN ITS COMPLAINT, PARAGRAPH 7, SAID THEY WERE THE OWNER BY ASSIGNMENT. I HAVE ASKED FOR THE ASSIGNMENT REPEATEDLY AND NEVER RECEIVED ONE. I RAISED STANDING IN ALMOST EVERY SET OF PAPERS THAT WE FILED WITH THIS COURT, AND AT THIS JUNCTURE WE'RE BEGINNING TO SERIOUSLY WONDER WHY THIS CASE CONTINUES.

THE PATENT WAS INVENTED BY DANIEL DEVOE, ALAN DEVOE, AND LAMBERT DEVOE. THEY'RE NOT PARTIES TO THIS CASE. WHEN THE COMPLAINT WAS FILED, WE CHECKED THE PATENT OFFICE RECORDS TO SEE IF IT HAD BEEN ASSIGNED TO PRESIDIO. WE COULDN'T FIND AN ASSIGNMENT, SO WE CHALLENGED STANDING AND ASKED FOR A COPY OF THE ASSIGNMENT.

VERY SIMPLY, AS RECENTLY STATED IN QUANTUM CORP., JUDGES CAN'T OVERLOOK A DEFECT IN THE CHAIN OF TITLE, FOR THE ENTIRETY OF MASS LITIGATION MIGHT WIND UP BEING VACATED. THERE WERE MOTIONS. WE HAVE TRAVELED DOWN TO SEATTLE TO DEPOSE THEIR

EXPERT WITNESS. WE'RE SPENDING A LOT OF MONEY. THE COURT HAS INVESTED SUBSTANTIAL TIME HERE, AND I THINK THIS NEEDS TO BE ADDRESSED SO EVERYBODY STOPS SQUANDERING ASSETS. IF THIS CASE IS TO BE VACATED, THEN I SIMPLY DON'T UNDERSTAND THE MOTION THAT I RECEIVED YESTERDAY TO CONSOLIDATE THIS UNSERVED CASE WITH A CASE THAT'S GOING TO BE VACATED. PERHAPS AFTER FURTHER STUDY WE MIGHT FIND OUT THE REASON FOR THAT, BUT RIGHT NOW I QUESTION WHY WE'RE HERE.

THE COURT: OBVIOUSLY, I'M GOING TO ADDRESS, I HOPE TO ADDRESS STANDING EARLY ON, AND PERHAPS EVEN BEFORE I RULE ON THE CONSTRUCTION. I JUST NEED TO MAKE SURE THAT THE ISSUE IS BRIEFED ADEQUATELY BY BOTH SIDES, AND SINCE WE'RE HERE, YOU KNOW, I DO WANT TO GO THROUGH THE CLAIM CONSTRUCTION. I KNOW IT'S TIME-CONSUMING. IT'S TIME-CONSUMING FOR ME, OBVIOUSLY, AND FOR ALL OF YOU, AND IT CERTAINLY COSTS YOUR CLIENTS MONEY, BUT I WOULDN'T WANT TO HAVE TO RESCHEDULE THIS AT SOME LATER TIME, BUT I CERTAINLY WILL ADDRESS THE STANDING ISSUE BEFORE THE CASE GOES MUCH FARTHER.

MR. GITTES: THANK YOU, YOUR HONOR.

THE SECOND ISSUE I JUST WANTED TO ALERT THE COURT TO WAS, ATC RESPECTFULLY POINTS OUT FOUR OF THE SIX CLAIM TERMS THAT ARE UP FOR MARKMAN CONSTRUCTION, WE CONTEND, ARE INDEFINITE WITHIN THE PURVIEW OF 35 U.S.C. 112, SUCH THAT A SKILLED ARTISAN WOULD BE UNABLE TO DETERMINE THE BOUNDARIES, AS TO WHAT THEY COVER, AND THESE CLAIMS ARE REFERRED TO AS

INSOLUBLY INDEFINITE. THAT'S A TERM THE FEDERAL CIRCUIT HAS ADOPTED FOR CLAIMS THAT CAN'T BE CONSTRUED, AND PERHAPS WE NEED TO DETERMINE IF THEY'RE DEFINITE AS PART OF THE ULTIMATE CLAIM CONSTRUCTION.

THE COURT: AND THE FOUR CLAIMS THAT YOU SAY ARE INDEFINITE ARE WHICH ONES?

MR. GITTES: ITEM ONE, YOUR HONOR, ITEM FOUR, ITEM FIVE, AND ITEM SIX.

THE COURT: AND THOSE ARE THE ONES THAT ARE, WHEN YOU USE THOSE NUMBERS, ONE, FOUR, FIVE, AND SIX, THEY'RE THE ONES DESIGNATED ON THE THIRD PAGE OF YOUR NOTEBOOK. IS THAT CORRECT?

MR. GITTES: YES, YOUR HONOR, AND, CONVENIENTLY, THAT PAGE APPEARS REPEATEDLY IN THE PRESENTATION, AS WE THINK IT'S USEFUL.

THE COURT: OKAY.

MR. GITTES: THE '356 PATENT IS ENTITLED INTEGRATED BROADBAND CERAMIC CAPACITOR ARRAY, AND THE FIELD OF THE INVENTION RELATES TO MONOLITHIC CAPACITORS, AS WILL BECOME CLEAR DURING THE COURSE OF THIS HEARING, PARTICULARLY WHEN DR. DOUGHERTY TESTIFIES. THE '356 PATENT TALKS ABOUT A MONOLITHIC CAPACITOR OR A CAPACITOR HAVING A MONOLITHIC DIELECTRIC BODY WHEREIN A MULTIPLE, WHERE MULTIPLE CAPACITORS ARE FORMED IN THE STRUCTURE PROVIDED.

DR. DOUGHERTY WILL TELL YOU ABOUT THIS MUCH BETTER

THAN I, BUT JUST FOR PURPOSES OF FOCUS, THERE ARE A PLURALITY OF PARALLEL PLATES, 10 AND 11, AND THEY ARE INTERLEAVED, MUCH LIKE ONE INTERWEAVES THEIR FINGERS, AND THEY RUN TO THE END OF THE DEVICE, AND THEY TOUCH AND CONNECT TO THE CONDUCTORS 12 AND 13 ON EACH SIDE. THE YELLOW MATERIAL, AND I'M TOLD THERE'S ALSO SOME BLUE IN THERE, BUT I DON'T SPOT IT, REPRESENTS DIELECTRIC MATERIAL, AND WHEN THESE ARE MADE, THEY ARE MADE SOMEWHAT LIKE A FOIL-COATED SANDWICH WHERE THERE'S FOIL ON TOP OF GREEN CERAMIC, AND THEY ESTABLISH THE REQUISITE STRUCTURE, AND THEN IT'S COMPRESSED AND ASSEMBLED. WHEN THEY'RE USED, THEY ARE PLACED ON THE PRINTER CIRCUIT BOARD, AND WE SEE THEM HERE, AND THERE ARE THREE CIRCLES OF THOSE ON THE CHART, BUT I CAN'T QUITE SPOT THEM ON POWERPOINT.

SO, IN OUR BRIEFS, WE MENTIONED TO THE COURT THAT THESE DEVICES CAN BE THE SIZE OF PENCIL POINTS, AND I WANTED THE COURT TO SEE THEM. SO, IF I MAY APPROACH, I'D LIKE TO HAND ONE UP TO THE COURT, AND I'M GOING TO PROVIDE THE PLASTIC BAG SO IT WILL MOVE AROUND LESS.

THE COURT: THESE ARE TINY, TINY, TINY.

MR. GITTES: AND IF THE COURT LOOKS AT IT, THERE'S TEN OF THESE THINGS ON THAT STRIP. THEY ARE ROUGHLY OPPOSITE THE HOLES, AND THEY'RE PACKAGED THIS WAY SO THAT, IN MACHINE ASSEMBLY, THEY CAN BE HANDLED, BUT THEY'RE QUITE SMALL.

AS DR. DOUGHERTY WILL TELL YOU, THE '356 PATENT IS SET UP FOR A CAPACITOR DESIGNER, AND WHAT'S PRESENTED ON THIS SLIDE

IS JUST SOME EXCERPTS FROM THE PATENT WHICH RENDER MANIFEST THAT THE PATENT SPEAKS TO A CAPACITOR DESIGNER. THE PATENT DOES NOT SPEAK TO A MERE USER, BECAUSE A MERE USER DOESN'T CARE WHAT THE STRUCTURE IS. THEY SIMPLY SELECT A DEVICE THAT MEETS THEIR CIRCUIT REQUIREMENTS AND THEY INSTALL IT. THEY'D NEVER BE IN A POSITION TO CHANGE THE STRUCTURE. SO THAT'S A DIFFERENT ANIMAL.

WE HAVE PRESENTED IN SLIDES 11 AND 12 SOME OF THE KEY EXCERPTS OF THE CONSTRUCTION RULES SET FORTH IN OUR BRIEFS, AND WE'RE CERTAIN THAT THE COURT'S AWARE OF THEM. THEY ARE, FOR EXAMPLE, THE CLAIMS MUST BE CONSTRUED THROUGH THE LENS OF AN ARTISAN SKILLED IN THE RELEVANT ART. THUS, EXPERT TESTIMONY IS USEFUL TO ASSIST THE COURT TO DETERMINE WHAT THE CLAIM TERMS MEAN. THE SPECIFICATION IS THE SINGLE BEST GUIDE TO UNDERSTANDING THE CLAIM TERM. THE CLAIM TERM CAN BE PROPERLY LIMITED TO ITS REPEATED, CONSISTENT, AND EXCLUSIVE USAGE IN THE SPECIFICATION, AND SO IT GOES.

ON SLIDE 12, THERE ARE THE HALLIBURTON EXCERPTS, WHICH I MENTIONED BEFORE, WITH RESPECT TO THAT. SLIDE 13 IS ANOTHER REPEAT OF THE ELEMENTS WE SEEK TO HAVE CONSTRUED, AND, FOLLOWING THAT, SLIDES 14 THROUGH 19 SET UP EACH OF THE PARTIES' POSITIONS WITH RESPECT TO THE CLAIM TERMS.

AT THIS JUNCTURE, WITH THE COURT'S APPROVAL, I WOULD LIKE TO INTRODUCE OUR EXPERT, DR. DOUGHERTY, WHO WILL TALK TO ALL OF THESE ITEMS AND PROVIDE, PERHAPS, THE COURT WITH GREATER

FAMILIARITY WITH THE PATENT AT ISSUE.

THE COURT: OKAY.

DR. DOUGHERTY, IF YOU'LL COME FORWARD, PLEASE.

AND WHAT WE'RE GOING TO DO, WE'RE GOING TO HAVE YOU SWORN, SIT ON THE WITNESS STAND --

DR. DOUGHERTY: YES.

THE COURT: -- AND AS LONG AS YOU ARE ABLE TO POINT, IF YOU NEED TO.

DR. DOUGHERTY: I MAY BE ASSISTED BY ONE OF THE COUNSEL.

THE COURT: OKAY. SO, IF YOU NEED TO STEP DOWN, THAT'S FINE.

DR. DOUGHERTY: SURE. THANKS.

MR. GITTES: YOUR HONOR, OUT OF DEFERENCE TO THE GRAND DISTANCE IN THIS COURTROOM BETWEEN THE WITNESS STAND AND THE SCREEN, MAY WE GIVE DR. DOUGHERTY ONE OF THESE BOOKS SO HE CAN READ IT AS WELL?

THE COURT: YES.

THE DEPUTY CLERK: PLEASE RAISE YOUR RIGHT HAND.

(WITNESS SWORN.)

DR. DOUGHERTY: YES, I DO.

THE DEPUTY CLERK: PLEASE BE SEATED.

PLEASE STATE YOUR NAME FOR THE RECORD; SPELL YOUR FIRST AND LAST NAME FOR US.

DR. DOUGHERTY: MY NAME IS JOSEPH PATRICK DOUGHERTY;

J-O-S-E-P-H, P-A-T-R-I-C-K, D-O-U-G-H-E-R-T-Y.

JOSEPH P. DOUGHERTY, SWORN WITNESS, TESTIFIES:

DIRECT EXAMINATION BY MR. GITTES:

Q. GOOD MORNING, DR. DOUGHERTY.

A. GOOD MORNING.

Q. WOULD YOU PLEASE INTRODUCE YOURSELF TO THE COURT?

A. MY NAME IS DR. JOSEPH P. DOUGHERTY. I AM AN EMERITUS FACULTY MEMBER IN ELECTRICAL ENGINEERING AND MATERIALS AT PENN STATE UNIVERSITY. I RECEIVED THREE DEGREES IN ELECTRICAL ENGINEERING, A B.S. FROM VILLANOVA UNIVERSITY, AN M.S. AND PH.D. FROM PENN STATE UNIVERSITY, AND I RECEIVED MY PH.D. IN 1972. I WAS AT PENN STATE UNIVERSITY FOR MORE THAN 15 YEARS. FROM 1988 TO 1999, I WAS DIRECTOR OF THE CENTER FOR DIELECTRIC STUDIES, AND THAT'S A NATIONAL SCIENCE FOUNDATION INDUSTRY-UNIVERSITY COOPERATIVE RESEARCH CENTER, AND IT SPECIFICALLY FOCUSES ON MULTILAYER CAPACITORS.

THE WITNESS: AND IN FACT, COULD I HAVE HIM PUT UP THE FIRST SLIDE?

THE COURT: YES.

A. (CONTINUING) AS YOU CAN SEE, THIS IS A BROCHURE THAT THE CURRENT DIRECTORS PUT OUT, AND YOU CAN SEE THE MAJOR FOCUS IS ON MULTILAYER CAPACITORS, AND THAT WAS THE INITIAL REASON FOR FOUNDING THE CENTER, AND WE'VE BEEN IN EXISTENCE FOR QUITE A FEW YEARS.

Q. CAN YOU PLEASE GIVE US AN EXAMPLE OF A COOPERATIVE PROJECT

THAT CDS HAS DONE WITH A CAPACITOR MANUFACTURER UNDER YOUR LEADERSHIP?
A. YES. ACTUALLY --
MR. AHRENS: YOUR HONOR, WE'RE NOT CHALLENGING THE CREDENTIALS OF THIS EXPERT AND WE UNDERSTAND HE'S A PROFESSOR AND HE KNOWS ABOUT CAPACITORS AND HE'S HERE TO TALK ABOUT THAT, SO.
THE COURT: RIGHT, AND THERE IS A C.V., WELL, A C.V. SOMEWHERE IN THE MATERIALS. I MEAN, WE ONLY HAVE A CERTAIN PERIOD OF TIME. I DON'T MIND HIM GIVING US THE EXAMPLE AS LONG AS WE CAN GET TO EVERYTHING ELSE, SO.
MR. GITTES: CAN I SUBMIT DR. DOUGHERTY AS AN EXPERT IN THIS CASE, YOUR HONOR?
THE COURT: YES, AND I'LL ACCEPT THAT.
BY MR. GITTES:
Q. HOW MANY MULTILAYER CERAMIC CAPACITORS HAVE YOU DESIGNED IN YOUR PROFESSIONAL CAREER?
A. DOZENS AND DOZENS.
Q. AND HOW MANY DESIGNS FOR MULTILAYER CERAMIC CAPACITORS HAVE YOU ASSISTED OTHERS WITH OR CONSULTED ABOUT?
A. DOZENS AND DOZENS.
Q. DURING THIS DISCUSSION, MAY I REFER TO MULTILAYER CAPACITORS AS MLCS?
A. PLEASE DO.
Q. DO YOU HAVE ANY RECENT PUBLICATIONS?

A. YES. ACTUALLY, I'M A MEMBER OF THE TECHNICAL PROGRAM COMMITTEE FOR CART. THAT'S A GROUP CALLED CART, THE CAPACITOR AND RESISTOR TECHNOLOGY SYMPOSIUM, AND IN 2003 I GAVE THE KEYNOTE ADDRESS AT THE SYMPOSIUM. I'M ALSO A COCHAIR ON THE CAPACITOR COMPONENTS COMMITTEE, MULTILAYER CAPACITOR COMPONENTS, THE CAPACITOR COMPONENTS COMMITTEE OF THE NATIONAL ELECTRONICS MANUFACTURING INITIATIVE, AND THAT GROUP PUTS OUT ROAD MAPS FOR THE USES OF ELECTRONIC COMPONENTS WITH A TWO-, FOUR-, EIGHT-, AND TEN-YEAR PLAN, AND I ASSISTED IN THE PREPARATION OF THE CAPACITOR COMPONENT SECTION FOR THE 2002 THROUGH 2006 ROAD MAPS.

Q. WOULD YOU GIVE US THE QUALIFICATIONS OF SOMEBODY YOU WOULD CONSIDER ONE ORDINARILY SKILLED IN THE ART IN THE MLC-DESIGN AREA?

A. WELL, I WOULD CONSIDER THAT THE PERSON WOULD HAVE A MASTER'S DEGREE, WITH AT LEAST TWO YEARS EXPERIENCE IN CAPACITOR DESIGN, OR THE EQUIVALENT WOULD BE SOMEONE WHO HAS A BACHELOR'S DEGREE WITH MAYBE FIVE OR SIX YEARS OF CAPACITOR-DESIGN EXPERIENCE. A PH.D. WITH EXPERIENCE IN THAT AREA COULD PROBABLY COME UP TO SPEED IN SIX MONTHS TO A YEAR.

Q. WHO DO YOU UNDERSTAND THAT PATENTS ARE ADDRESSED TO?

A. TO ONE OF ORDINARY SKILL IN THE ART, RELEVANT ART, ACTUALLY.

Q. AND WHAT IS YOUR IMPRESSION OF WHAT THE RELEVANT ART IS WITH RESPECT TO THE PATENT IN SUIT?

A. THAT THE RELEVANT ART IS CLEARLY THE DESIGN OF MULTILAYER CAPACITORS. IN THE NEXT SLIDE, THIS IS -- THANK YOU FOR HELPING ME OUT BY INTRODUCING IT. IT CLEARLY SPEAKS TO CAPACITOR DESIGN AND DESIGN CHOICE, AND YOU CAN SEE THAT IT'S MENTIONED OVER AND OVER AGAIN IN THE SPECIFICATION.

Q. WHAT LEVEL OF SKILL IN THE ART DO YOU POSSESS IN YOUR OPINION?

A. I THINK I'M A LITTLE ABOVE THE ORDINARY SKILL IN THE ART.

Q. ARE YOU AWARE OF THE SKILL LEVEL IN MAY OF 2002, WHEN THIS PATENT WAS FILED?

A. YES. ACTUALLY, IN THAT TIME PERIOD, I WAS ACTUALLY PREPARING THE ROAD MAP FOR THE NATIONAL ELECTRONICS MANUFACTURING INITIATIVE, AND WE HAD CAPACITOR DESIGNERS ON OUR COMMITTEE FROM VARIOUS COMPANIES, AND AT ABOUT THAT SAME TIME PERIOD I WAS ALSO CONSULTING WITH JOHANSON DIELECTRICS, AND I WAS WORKING ON A RESEARCH PROJECT WITH ANOTHER ONE, AND I WAS WORKING ONE-ON-ONE DESIGNING CAPACITORS WITH PERSONS WHO WERE OF THE SKILL IN THE ART, ORDINARY SKILL IN THE ART.

Q. DO YOU CONSIDER A USER OF CAPACITORS TO BE A SKILLED ARTISAN IN THE CAPACITOR-DESIGN FIELD?

A. JUST BEING AN ELECTRICAL ENGINEER ALONE REALLY DOES NOT MAKE ONE A QUALIFIED CAPACITOR DESIGNER. THE ELECTRICAL ENGINEER IS REALLY LOOKING TO SEE WHAT THE OVERALL PERFORMANCE CHARACTERISTICS ARE, AND THEY'RE NOT AT LIBERTY TO CHANGE THE DESIGN OR CHARACTERISTICS OF THE INTERIOR PLATES IN A

CAPACITOR.

Q. WHAT DO YOU UNDERSTAND TO BE THE STARTING POINT IN THE CLAIM CONSTRUCTION PROCESS?

MR. AHRENS: OBJECTION; FOUNDATION.

THE COURT: SUSTAINED.

BY MR. GITTES:

Q. DO YOU HAVE AN UNDERSTANDING OF HOW A CLAIM IS TO BE CONSTRUED?

A. YES. WHAT IS TO BE DONE IS TO LOOK AT THE WORDS IN THE CLAIM AND TO SEE WHAT THE MEANING WOULD BE TO ONE OF ORDINARY SKILL IN THE RELEVANT ART.

THE COURT: AND HAVE YOU TESTIFIED BEFORE?

THE WITNESS: NO, I HAVEN'T, ACTUALLY. I'M SORT OF NERVOUS. THIS IS THE FIRST TIME FOR ME.

THE COURT: OKAY. SO YOU'VE LEARNED WHAT THE LAW IS.

THE WITNESS: YES. I WAS TAUGHT BY COUNSEL, EXACTLY.

THE COURT: GO AHEAD.

BY MR. GITTES:

Q. TO BE CLEAR, DR. DOUGHERTY, HAVE YOU BEEN INVOLVED AS AN EXPERT WITNESS IN PATENT CASES BEFORE, EVEN THOUGH YOU MAY NOT HAVE TESTIFIED?

A. YES. I WAS ACTUALLY INVOLVED IN THREE OTHER PATENT LITIGATIONS. ONE WAS THE TAKING A MULTILAYERED CAPACITOR AND INCORPORATING IT INTO A FEED-THROUGH. TWO OTHER CASES WERE ACTUALLY DIELECTRIC MATERIALS AND THE USE OF DIELECTRIC

MATERIALS IN SENSORS AND TRANSDUCERS AND HOW THEY WOULD BE USED IN THE CAPACITORS IN QUESTION THAT ARE MADE FROM DIELECTRIC MATERIALS, AND THAT'S MY EXPERTISE.
Q. BUT YOU NEVER TESTIFIED IN THOSE CASES?
A. NO. IN FACT, I PROVIDED DATA TO COUNSEL, AND EVERY TIME I PROVIDED ENOUGH DATA, THEY SEEMED TO END.
Q. WHEN YOU REFER TO THE PLAIN AND ORDINARY MEANING, ARE YOU NECESSARILY OR IN MOST CASES REFERRING TO COMMON ENGLISH MEANINGS OF A WORD?
A. NO.
Q. BY PLAIN AND ORDINARY MEANING, DO YOU ACTUALLY MEAN THAT A CLAIM ELEMENT HAS A PLAIN AND ORDINARY MEANING TO A SKILLED ARTISAN IN THE RELEVANT ART?
A. YES.
MR. AHRENS: WELL, YOUR HONOR, COULD WE JUST NOT HAVE SO MANY LEADING QUESTIONS? OBJECTION TO THE LEADING NATURE.
THE COURT: YES. I'M JUST THINKING. I'M GOING TO LET HIM LEAD A LITTLE BIT. I MEAN, THIS IS THE LAW, YOU KNOW. HE'S NOT GOING TO TEACH ME WHAT THE LAW IS, HOPEFULLY. SO I'LL LET HIM LEAD AS FAR AS THIS IS CONCERNED. BUT WHEN WE GET TO THE OTHER, OBVIOUSLY, TO THE TERMS, I'LL MAKE SURE HE'S NOT.
BY MR. GITTES:
Q. USING A PLAIN AND ORDINARY MEANING, WHAT DOES A PLATE MEAN?
A. WHAT DOES A PLATE MEAN? WELL, THE TERM PLATE AS A COLLOQUIAL THING COULD BE A PLATE THAT I HAD MY BREAKFAST ON OR

IT COULD BE A METAL PLATE IN A CAPACITOR. I MEAN, IT COULD HAVE A LOT OF DIFFERENT MEANINGS.

Q. DOES THE ONE HAVE MEANING TO ONE ORDINARILY SKILLED IN THE ART, IN THE CAPACITOR-DESIGN ART?

A. WELL, A CAPACITOR DESIGNER WOULDN'T PUT DINNER PLATES INSIDE THE CAPACITOR.

Q. WHAT IS A CAPACITOR?

THE COURT: WELL, LET ME GO BACK.

THE WITNESS: YES.

THE COURT: SO, IN A CAPACITOR, IT WOULD BE A METAL PLATE.

THE WITNESS: IN A CAPACITOR, IT WOULD BE A METAL PLATE, EXACTLY.

THE COURT: ALL RIGHT, GO AHEAD.

BY MR. GITTES:

Q. WHAT IS A CAPACITOR?

A. IN THE NEXT SLIDE, ACTUALLY, WE TRIED TO ILLUSTRATE WHAT IS A PARALLEL PLATE CAPACITOR. YOU CAN SEE UP THERE THESE TWO PLATES SHOWN IN CROSS-SECTION HAVE AN AREA A. THE CAPACITOR STORES AN ELECTRICAL CHARGE AND IT REROUTES THE CHARGE WITHIN AN ELECTRICAL CIRCUIT, AND THEN THE ABILITY OF A CAPACITOR TO STORE A CHARGE FOR THE VOLTAGE APPLIED IS CALLED ITS CAPACITANCE, AND IT'S MEASURED IN UNITS OF FARADS. SO, IF WE TAKE A VOLTAGE -- LET ME SEE HERE. IF WE TAKE VOLTAGE B AND APPLY IT HERE, WE CAN SEE WE'RE GOING TO HAVE A CHARGE BUILD UP

ON THESE PLATES. THESE PLATES HAVE AREAS -- SORRY -- AND IN BETWEEN IS A, THE SPACE IS A DIELECTRIC. IN FACT, AS SHOWN HERE, THE DIELECTRIC IS AIR. IN A REAL CAPACITOR, A COMMERCIAL CAPACITOR, THE DIELECTRIC WOULD BE SOMETHING LIKE BARIUM TITANATE, A DIELECTRIC INSULATOR, WHICH HAS A MUCH HIGHER DIELECTRIC CONSTANT. THE DIELECTRIC CONSTANT RELATES TO HOW MUCH, THE RATIO OF HOW MUCH MORE CHARGE IS STORED WITH THAT MATERIAL AS OPPOSED TO AIR. SO YOU HAVE THE GEOMETRY FACTOR IN AIR AND THEN YOU HAVE THE DIELECTRIC MATERIAL FACTOR.

Q. IN WHAT KIND OF DEVICES ARE CAPACITORS USED?

A. IN THE NEXT ONE, WE SHOW CAPACITORS BEING USED IN ALMOST EVERY VIRTUAL PRESENT-DAY ELECTRONIC DEVICE. A TELEVISION COULD HAVE AS MANY AS A THOUSAND MULTILAYERED CAPACITORS IN THERE. AS YOUR HONOR SAW, THEY'RE QUITE SMALL. THERE'S A COUPLE HUNDRED IN A TYPICAL CELL PHONE.

Q. WHAT DO CAPACITORS DO?

A. CAPACITORS, IN THAT APPLICATION, ONE APPLICATION WOULD BE IN POWER SUPPLIES TO SMOOTH OUT THE DC VOLTAGE ON A POWER SUPPLY SO YOU DON'T HAVE SPIKES OR RIPPLES ON THE POWER SUPPLY. ANOTHER APPLICATION WOULD BE IN TRANSISTORS, HIGH-SPEED TRANSISTORS FOR SWITCHING. THEY ACT AS VIRTUAL BATTERIES TO PROVIDE A CHARGE SO THAT THE CHARGE DOES NOT HAVE TO TRAVEL VERY FAR TO GET TO THE TRANSISTOR. IN MODERN ELECTRONICS, EVEN THE SPEED OF LIGHT ISN'T THE STANDARD ANYMORE.

Q. WHAT TYPES OF CAPACITORS IS THE '356 PATENT DIRECTED TO?

A. IT'S DIRECTED TO MULTILAYER CAPACITORS, MONOLITHIC MULTILAYERED CAPACITORS, AND IN FACT THESE CAPACITORS SHOWN HERE ARE PRETTY BIG, ACTUALLY. THIS IS AN OLD-FASHIONED CIRCUIT BOARD. IN THE SMALLER ONES OVER HERE, YOU CAN SEE A FEW OF THEM, BUT IN FACT THEY'RE MOUNTED ON PRINTED CIRCUIT BOARDS.

THE COURT: THEY'RE MOUNTED ON WHAT?

THE WITNESS: PRINTED CIRCUIT BOARDS, PCB FOR SHORT. IF YOU OPEN UP AN ELECTRONIC THING, THE GREEN LAYER YOU SEE IS THE PRINTED CIRCUIT BOARD, COMMONLY CALLED FR4.

BY MR. GITTES:

Q. WHAT TYPES OF CAPACITORS ARE IN AN MLC?

A. IN THE NEXT SLIDE, THIS IS SHOWN FOR CLARITY FROM A PATENT OVER HERE. YOU CAN SEE THAT THERE'S MULTIPLE PLATES WITHIN AN MLC. IT'S EASIER TO SEE IN THIS SLIDE HERE BECAUSE THERE AREN'T SO MANY. THERE CAN BE HUNDREDS. SEE, THIS PLATE HERE IS CONNECTED TO THIS CONTACT OVER HERE, TOUCHING IT. SEE THIS PLATE OVER HERE? THIS IS CONNECTED TO THIS CONTACT OVER HERE, AND IN BETWEEN THEM THERE'S A CAPACITANCE AND THERE'S A DIELECTRIC LAYER.

Q. WHAT DOES THE P AND CP STAND FOR?

A. THAT'S MY DESIGNATION FOR C PARALLEL, C PLATE, PARALLEL PLATE CAPACITORS.

Q. WHAT IS FRINGE-EFFECT CAPACITANCE?

A. IF WE TAKE THE SAME PICTURE AND WE ILLUSTRATE IN THE NEXT

SLIDE, ESSENTIALLY, YOU CAN SEE THAT THERE'S A FRINGE EFFECT, CFE, FRINGE-EFFECT CAPACITOR LISTED HERE BETWEEN THESE TWO CONTACTS, BETWEEN THIS CONTACT AND THIS CONTACT, AND IN THIS CASE, YOUR HONOR, WHAT WE HAVE IS, WE'RE TAKING THESE PARALLEL PLATES, WHICH ARE LIKE THIS, WE'RE PUTTING THEM EDGE-TO-EDGE, AND THE CLOSER WE GET THEM, THE HIGHER THE ELECTRIC FIELD INTENSITY IS FOR A GIVEN VOLTAGE, AND THOSE LINES ON THE PICTURE THERE INDICATE THE LINES OF ELECTRIC FIELD. SO THERE WOULD BE A FRINGE-EFFECT CAPACITOR AT THE TOP GAP AS WELL AS THE BOTTOM GAP.

THE COURT: AND THE CLOSER THEY ARE, WHAT DID YOU SAY?

THE WITNESS: THE CLOSER THEY ARE, THE HIGHER THE CAPACITANCE WOULD BE. ESSENTIALLY WHAT YOU'RE DOING, YOU HAVE A CERTAIN VOLTAGE AND YOU'RE SQUEEZING ALL THAT ENERGY INTO A SMALLER VOLUME. SO THAT REALLY IS THE WAY THE PHYSICS OF THE CAPACITOR'S WORKING.

BY MR. GITTES:

Q. WHAT TYPE OF COMPARISON EXISTS BETWEEN PARALLEL PLATE CAPACITORS AND FRINGE-EFFECT CAPACITORS?

A. IN THE NEXT SLIDE, I TRIED TO SHOW THE COMPARISON. IF, IN FACT, WE TOOK A PARALLEL PLATE CAPACITOR AND THESE, THE CALCULATIONS AT THE BOTTOM FOR WHAT'S CALLED THE 0603 CAPACITOR, IT'S 60,000THS OF AN INCH BY 30,000THS OF AN INCH, AND BETWEEN EACH PAIR OF PLATES IN THERE WE HAVE APPROXIMATELY 370 PICOFARADS. AN APPROXIMATION FOR THE FRINGE-EFFECT

CAPACITOR, FOR THIS ONE DOWN HERE, WOULD BE AROUND FOUR PICOFARADS. SO YOU CAN SEE A FACTOR OF A HUNDREDTH DIFFERENCE BETWEEN THE FRINGE-EFFECT CAPACITANCE AND THE PARALLEL-PLATE CAPACITANCE FROM JUST ONE SINGLE PLATE. NOW, IT'S NOT UNUSUAL AT ALL. THAT CAPACITOR THAT YOU HAVE THERE PROBABLY HAS 40 OR 50 PLATES IN IT.

THE COURT: THE ONE IN THE LITTLE PLASTIC BAG?

THE WITNESS: YES. THERE ARE 40 OR 50, AND THEY'RE MADE ACTUALLY WITH SEVERAL HUNDRED NOW, AND THEY'RE MUCH FINER. THEY'RE ABOUT A TENTH OF A HUMAN-HAIR SIZE INSIDE. SO THAT IF YOU TOOK ALL THOSE, IF YOU TAKE THIS AND MULTIPLY IT BY A HUNDRED, SO INSTEAD OF HAVING A HUNDRED TIMES, YOU'VE GOT, YOU KNOW, A THOUSAND TIMES' DIFFERENCE. THAT MAKES THE FRINGE-EFFECT CAPACITANCE EXTREMELY SMALL BY COMPARISON TO THE TOTAL CAPACITANCE OF THE DEVICE ITSELF.

THE COURT: AND WHERE, I SEE WHERE THE, SO THE CP IS THE SPACE IN BETWEEN THE TWO PLATES --

THE WITNESS: RIGHT.

THE COURT: -- ABOVE, AND THE CFE IS JUST THAT LITTLE (PAUSE) --

THE WITNESS: RIGHT, EXACTLY.

THE COURT: -- THAT LITTLE TEENY SPACE.

THE WITNESS: ACTUALLY, ELECTRIC FIELD LINES GO INSIDE THE DIELECTRIC, WHICH IS RIGHT OVER HERE, AND THEN ALSO ELECTRIC FIELD LINES OUTSIDE IN HERE, AND THE ELECTRIC FIELD

LINES WOULD DIVIDE PROPORTIONALLY DEPENDING ON THE DIELECTRIC CONSTANT THAT WE TALKED ABOUT BEFORE. SO YOU REALLY DON'T GET A LOT OF CONTRIBUTION FROM A FRINGE-EFFECT CAPACITOR LIKE THAT.

THE COURT: OKAY.

BY MR. GITTES:

Q. DR. DOUGHERTY, I'M PUTTING ASIDE THE CLAIM CONSTRUCTION ISSUES FOR THE MOMENT. JUST GENERALLY READ CLAIM ONE ON THESE TWO FIGURES OF THE PATENT TO GIVE THE COURT A SENSE OF HOW THE CLAIM STRUCTURE RELATES TO WHAT'S SHOWN IN THE PATENT.

MR. AHRENS: I'M GOING TO OBJECT, YOUR HONOR. FIGURE 2-A IS DESCRIBED AS PRIOR ART, AND THIS ISN'T A VALIDITY HEARING. IT'S A CLAIM CONSTRUCTION HEARING, AND I DON'T SEE HOW THIS RELATES TO THE -- YOU ASKED ME SPECIFICALLY ABOUT THREE OF THE SIX TERMS.

THE COURT: YES. I AGREE. I'M NOT GOING TO -- I MEAN, WE HAVEN'T EVEN GOTTEN TO THE TERMS YET AND IT'S ALREADY 10:15, SO I THINK WE HAVE TO MOVE ON.

MR. GITTES: ALL RIGHT.

BY MR. GITTES:

Q. WHAT IS A MONOLITHIC CAPACITOR?

A. WHAT IS A MONOLITHIC CAPACITOR? OKAY. THIS IS A DRAWING FROM, THAT ILLUSTRATES THE CONSTRUCTION OF A MONOLITHIC MULTILAYER CAPACITOR. IN YELLOW OVER HERE, YOU CAN SEE THE DIELECTRIC SHEETS. OKAY? THE DIELECTRIC SHEETS ARE LIKE A LITTLE PLASTICIZED PIECE OF PAPER, IF YOU WILL. YOU KNOW THOSE

LITTLE MAGNETS YOU HAVE ON YOUR REFRIGERATOR THAT HAVE MAGNETIC PARTS WITHIN THEM? WELL, THIS IS ESSENTIALLY THE SAME THING WITH DIELECTRIC PARTICLES INSIDE THEM, AND THEN ON TOP OF THAT IT IS PRINTED JUST LIKE THESE LITTLE MAGNET THINGS HAVE THINGS PRINTED ON THEM EXCEPT, INSTEAD OF PRINTING AN AD, WE PRINT A CONDUCTIVE LAYER OVER HERE, WHICH BECOMES A PLATE, AND THIS IS DONE OVER AND OVER AGAIN FOR HUNDREDS OF TIMES. YOU CAN SEE THAT THE CONDUCTIVE PLATES COME OUT AT AN EDGE, THESE LITTLE (PAUSE), OVER HERE, AND ON THE OPPOSITE SIDE, AS WAS MENTIONED, IT'S INTERLEAVED. THERE ARE THE SAME PLATES COMING OUT ON THE OTHER SIDE. THEN THE THING IS PRESSED TOGETHER, AND THEN IT'S TAKEN UP TO A HIGH TEMPERATURE, ABOUT 90 PERCENT OF ITS MELTING POINT, AND IT'S A PROCESS CALLED SINTERING, WHERE IN FACT THE STUFF DOESN'T REALLY MELT, BUT IT COMPACTS TOGETHER, USUALLY ABOUT 17-PERCENT SHRINKAGE, AND THEN AFTER THAT POINT THE THING IS DIPPED INTO A CONDUCTIVE LIQUID TO FORM CONDUCTIVE CONTACTS, AND THAT'S THE TYPICAL WAY THAT THE MULTILAYERED CAPACITOR WOULD BE MANUFACTURED.

Q. WHAT DEGREES OF MONOLITHICNESS ARE YOU AWARE OF?

A. WELL, IN MY PROFESSION, THERE REALLY AREN'T ANY DEGREES OF MONOLITHICNESS. I MEAN, THIS IS A DEFINITION THAT I PICKED UP ONE SUNDAY AFTERNOON IN THE PENN STATE ENGINEERING LIBRARY, THE MONOLITHIC CAPACITOR, AND ESSENTIALLY IT IS, A MONOLITHIC CAPACITOR IS MADE JUST THE WAY WE DESCRIBED OVER HERE. THERE ARE NO DEGREES OF MONOLITHICNESS. IT'S EITHER A MONOLITHIC

CAPACITOR OR IT'S NOT.

Q. WHAT DOES THE TERM A SUBSTANTIALLY MONOLITHIC DIELECTRIC BODY MEAN TO YOU AS A SKILLED ARTISAN?

A. IT REALLY DOESN'T MEAN ANYTHING IN PARTICULAR BECAUSE IT'S INDEFINITE. IT DOESN'T, IT'S NOT SPECIFICALLY DEFINED, AND I REMEMBER THE FIRST TIME I LOOKED AT IT, IT SORT OF BOTHERED ME. THE '356 PATENT DOESN'T REALLY DEFINE WHAT A SUBSTANTIALLY MONOLITHIC DIELECTRIC BODY ACTUALLY IS. IT USES THE TERM A COUPLE TIMES, BUT IT DOESN'T TELL YOU WHAT IT ACTUALLY IS, AND I KNOW THAT IN OUR CONSTRUCTION THAT WE LOOKED AT, WHERE WE HAD, THE DIELECTRIC BODY WAS LARGELY, BUT NOT WHOLLY, WITHOUT SEAMS. I TRIED TO INCLUDE THOSE PLATES THAT WERE COMING OUT THAT WE SHOWED IN THE PREVIOUS SLIDE, THAT THIS IS THE WAY THEY ACTUALLY LOOK.

THE COURT: AND BY SEAMS, WHAT DO YOU MEAN?

THE WITNESS: THE SEAMS WOULD BE THE METAL PLATES COMING OUT TO THE EDGE, AND THEY APPEAR TO BE SEAMS, AND THAT'S WHAT WOULD BE UNDERSTOOD BY A CAPACITOR DESIGNER. THEY WOULD UNDERSTAND THAT THOSE SEAMS ARE THERE, AND IN FACT PRESIDIO'S CONSTRUCTION, TO ME, SORT OF SEEMED LIKE IT WAS TAKING A BUNCH OF NONTECHNICAL DICTIONARY WORDS AND SORT OF STRINGING THEM TOGETHER, AND IT WASN'T, IT WASN'T CONSISTENT ENOUGH, TO MY PERSONAL THINKING, TO DEFINE WHAT A SUBSTANTIALLY MONOLITHIC CAPACITOR WOULD BE.

IN FACT, IN THE NEXT SLIDE I TOOK, THERE'S A COUPLE

FIGURES, OR FIGURE 8-A, THAT WAS IN THE '356 PATENT, AND I THINK IN THE EXPERT TESTIMONY THAT THE PRESIDIO WITNESS GAVE, I MEAN, THEY AGREED THAT THIS WOULD BE NOT, CONSIDERED NOT SUBSTANTIALLY MONOLITHIC. HOWEVER, IF WE TOOK THIS PART UP HERE, WHICH SURE LOOKS LIKE THE MONOLITHIC CAPACITOR WE'VE BEEN TALKING ABOUT, AND PUT IT UP HERE, THE TESTIMONY WAS, WELL, IT'S SUBJECTIVE, YOU COULDN'T ANSWER THAT, AND SO THIS PARTICULAR TERM IS SUBJECTIVE ENOUGH THAT IT COULD APPLY TO A WHOLE BUNCH OF DIFFERENT THINGS.

MR. AHRENS: YOUR HONOR, I'M GOING TO OBJECT TO THIS WITNESS TESTIFYING BASED ON SOMETHING PUT IN FRONT OF HIM ABOUT WHAT SOMEBODY ELSE SAID. I MEAN, THE QUESTIONS CAN BE ELICITED, BUT THIS IS JUST LIKE HAVING A PRESENTATION BEING MADE, A TUTORIAL BY DR. DOUGHERTY. HE'S NOT BEING ASKED ANY QUESTIONS. HE'S BEING FED THE ANSWERS, AND HE'S NOW TESTIFYING ABOUT WHAT SOMEBODY ELSE SAID IN A DEPOSITION WHO'S NOT EVEN HERE, AND I HAVE A REAL PROBLEM PROCEDUREWISE.

THE COURT: YES, I AGREE. I MEAN, YOU'RE SUPPOSED TO BE TEACHING ME WHAT YOU BELIEVE THE DEFINITION IS OF THESE TERMS.

THE WITNESS: OKAY.

THE COURT: OKAY? SO WE'LL GO BACK TO THAT.

BY MR. GITTES:

Q. WHY DID YOU CONSTRUE A CONDUCTIVE FIRST CONTACT IN THE MANNER SHOWN IN THE NEXT SLIDE?

A. I CONSTRUED IT THIS WAY PRIMARILY BASED ON MY EXAMINATION OF THE PATENT SPECIFICATION. IN FACT, IN THE NEXT SLIDE, YOU'LL SEE THAT, CONSISTENTLY AND CONSTANTLY THROUGHOUT THE ENTIRE SPECIFICATION, CONTACT 12 AND CONTACT 13, AS SHOWN HERE IN YELLOW AND GREEN, RESPECTIVELY, ARE ALWAYS SHOWN TO BE THE NUMBER ONE. YOU CAN SEE THAT THEY'RE USED FOR, IN THIS PARTICULAR FIGURE, CONNECTING TO AN OUTSIDE CONDUCTOR. IN THIS CASE, IT'S TRACED ON THE PRINTED CIRCUIT BOARD LIKE WE SHOWED BEFORE. IN EVERY CASE, THEY'RE SHOWN TO BE, YOU KNOW, PRESENT ON THE DIELECTRIC BODY, AND THEY'RE ACTUALLY TOUCHING THE DIELECTRIC BODY IN EVERY CASE, AND IN EVERY SINGLE CASE THEY'RE ACTUALLY TOUCHING THE PLATES, IN THE INTERIOR PLATES OVER HERE, AND THEY'RE TOUCHING THEM AND THEY'RE MAKING ELECTRICAL CONTACT WITH THEM. SO IT WAS CONSISTENT THROUGHOUT THE WORDS AND THE ILLUSTRATIONS IN THE SPECIFICATION THAT THAT'S EXACTLY WHAT THE CONTACT HAS TO DO.

THE COURT: FOR EXAMPLE, IN 10-A AND IN 2-A, THE PLATES AREN'T ALWAYS TOUCHING. TWELVE AND 13 ARE, THOUGH.

THE WITNESS: IN FACT, OVER HERE, THE PLATES ARE TOUCHING 12, AND THE ALTERNATING SIDE OVER HERE, THEY'RE TOUCHING 13. IT WOULD BE LIKE THE FRONT AND BACK IN THAT OTHER ILLUSTRATION.

THE COURT: SO YOU'RE SAYING THE PLATES ARE ALWAYS TOUCHING ON ONE SIDE OR THE OTHER.

THE WITNESS: YES. IN FACT, IT ALTERNATES BACK AND

FORTH. IT MUST. OTHERWISE, IF THEY WEREN'T SEPARATED AND TOUCHING, THE CAPACITOR WOULD BE A SHORTCIRCUIT AND IT WOULDN'T WORK AS A CAPACITOR.

THE COURT: AND YOUR DEFINITION IS THAT THEY ARE PHYSICALLY TOUCHING. IS THAT CORRECT?

THE WITNESS: MY DEFINITION IS THAT THEY'RE PHYSICALLY TOUCHING TO MAKE ELECTRICAL CONTACT, AND THAT'S REALLY THE WAY IT WOULD BE. A CAPACITOR DESIGNER WOULD NOT THINK -- I MEAN, HE'S GOING TO HATE ME FOR THIS -- BUT ANYWAY, I THINK ELECTRICAL CONTACT IS NOT ENOUGH. OKAY? IF THIS PROJECTOR IS IN ELECTRICAL CONTACT WITH THE WALL, THEN IN FACT, THEN, IT'S IN ELECTRICAL CONTACT WITH BOULDER DAM. I MEAN, THAT'S RIDICULOUS. THE CONTACT DOESN'T GO OUT TO BOULDER DAM EVEN THOUGH THE ELECTRICAL CONNECTION DOES, BUT IN FACT NO CAPACITOR DESIGNER IN HIS RIGHT MIGHT NOT WOULD NOT MAKE THEM IN PHYSICAL CONTACT. IT'S WHAT WOULD BE UNDERSTOOD BY SOMEBODY WHO'S REALLY OF ORDINARY SKILL IN THE ART.

BY MR. GITTES:

Q. WHAT ARE 12 AND 13 IN FIGURE 2-A?

A. TWELVE AND 13 IN FIGURE 2-A ARE THE CONTACTS. OKAY? AND YOU CAN SEE THAT THESE CONTACTS ARE CLEARLY SHOWN RIGHT OVER HERE AND RIGHT OVER HERE AS A, YOU KNOW, SINGLE LAYER. YOU CAN SEE WHAT THEY LOOK LIKE. THEY LOOK LIKE A SINGLE LAYER OVER HERE. THEY LOOK LIKE A SINGLE LAYER OVER HERE, AND THEY'RE MARKED LIKE A SINGLE LAYER, AND --

THE COURT: YOU MEAN THE HATCH MARKS?

THE WITNESS: THE HATCH MARKS. THEY'RE MARKED AS A SINGLE LAYER.

THE COURT: NOW, YOU HEARD THE EXPLANATION FROM PRESIDIO THAT IT COULD BE MULTIPLE LAYERS.

THE WITNESS: YES. YES, I DID, ACTUALLY, AND THE MULTIPLE LAYERS WOULD MAKE THE ELECTRICAL CONTACT. THAT'S WHY I BROUGHT UP, YOU KNOW, THIS THING THAT YOU CAN'T HAVE ELECTRIC CONTACT GO ALL THE WAY OUT, AND IN FACT SOMETIMES IF THERE WAS A FIBEROPTIC CABLE CONNECTING ONE OF THESE THINGS OVER, WE WOULDN'T HAVE WHAT WOULD NORMALLY BE TERMED ELECTRIC CONTACT OR ELECTRICAL CONTACT AS SEEN IN THE DESIGN OF A MULTILAYERED CAPACITOR. WE DON'T REALLY WANT TO TAKE THIS CONTACT. I MEAN, WE HAVE BUSINESS CONTACT, BUT WE DON'T THINK OF THEM AS CONNECTING CAPACITOR PLATES.

THE COURT: IS THERE A DIFFERENCE BETWEEN A CONDUCTIVE CONTACT AND CONDUCTIVE PLATE?

THE WITNESS: WELL, THE PLATES, IN THE TERMS OF THIS PARTICULAR PATENT, THE PLATES ARE THE ONES INSIDE --

THE COURT: RIGHT.

THE WITNESS: -- AND THE CONTACTS ARE THE ONES OUTSIDE.

THE COURT: AND THEY'RE DIFFERENT MATERIALS, I ASSUME.

THE WITNESS: THEY ARE TYPICALLY DIFFERENT MATERIALS, YES, AS A MATTER OF FACT. THE CONTACTS ACTUALLY ARE FORMED --

IT'S DESCRIBED IN THE PATENT. THEY ACTUALLY DO TWO DIFFERENT THINGS. THE CONTACT HAS TO CONTACT ALL THOSE LAYERS ON ONE SIDE. OTHERWISE, THE LAYER DOESN'T ELECTRICALLY PARTICIPATE IN THE DEVICE. SO, ALWAYS ON THE RIGHT SIDE OVER HERE, EVERY CONTACT IS BEING MADE, AND ON THE LEFT SIDE, THE ALTERNATE CONTACTS. THIS WOULD BE THE POSITIVE VOLTAGE. THIS WOULD BE THE NEGATIVE VOLTAGE, LIKE WE SHOWED YOU IN THAT OTHER PICTURE. SO THOSE CONTACTS ARE BEING MADE THERE, AND AT THE SAME TIME THE DESCRIPTION THAT WAS USED IN THE SPECIFICATION OF HOW THEY WERE MADE, THE ONLY DESCRIPTION THAT WAS MADE, AND IT'S AN ACCURATE ONE, OF HOW THE MANUFACTURING IS DONE, THESE TINY THINGS ARE DIPPED INTO A CONDUCTIVE LIQUID SO THAT -- WHOOPS. SORRY. THESE THINGS ARE -- WE LOST IT. THAT'S ALL RIGHT. WELL, YOU REMEMBER WHAT IT LOOKS LIKE, RIGHT?

THE COURT: YES. I HAVE A PICTURE.

THE WITNESS: THESE THINGS ARE DIPPED INTO A CONDUCTIVE LIQUID, ESSENTIALLY, AND IF YOU TOOK YOUR FINGER AND YOU DIPPED IT INTO A LITTLE THING OF PAINT, YOU WOULD COME OUT WITH A SINGLE LAYER. YOU DON'T COME OUT WITH A MULTIPLE LAYER. AND IN FACT, IF YOU DIPPED YOUR FINGER IN AND LET IT DRY AND DID IT AGAIN, LIKE CHILDREN WOULD DO -- SORRY.

THE COURT: NO, AND I HAVE HAD A CHILD, YES.

THE WITNESS: YES. SO AS CHILDREN MIGHT DO, THEN IN FACT YOU'RE GOING TO HAVE TWO LAYERS, AND THE INTERESTING, YOU KNOW, AND TWO LAYERS ARE DIFFERENT. NOBODY WOULD THINK THAT

TWO LAYERS ARE ONE LAYER. THEY MIGHT PERFORM ONE FUNCTION, BUT THEY'RE TWO LAYERS, AND IN FACT THE CROSSHATCHING, THIS IS SOMETHING COUNSEL ASSISTED ME WITH.

MR. AHRENS: OBJECTION. HE'S NOW OPINING ABOUT SOMETHING HE'S CLEARLY NOT AN EXPERT IN.

THE COURT: RIGHT. TELL ME, FROM A PERSON SKILLED IN THE ART, WHY DOES THIS, I MEAN, WHY DOES THIS -- WELL, WHAT'S THE DIFFERENCE BETWEEN A LAYER AND MATERIAL, IF YOU CAN DECIPHER ONE?

THE WITNESS: YES, THERE ACTUALLY IS. THERE SHOULDN'T BE A DIFFERENCE, BUT IN FACT IN THE USAGE THAT PRESIDIO WANTED TO USE THERE IS A DIFFERENCE. IN THE '356 SPECIFICATION, THE MATERIAL AND LAYER ARE USED CONSISTENTLY TO HAVE THE SAME, SYNONYMOUS MEANING. THEY MEAN ONE HOMOGENEOUS LAYER, AND IN FACT THE LAYER ITSELF, YOU KNOW. SO, IF YOU HAVE TWO LAYERS, IF YOU TRY TO BASICALLY HAVE TWO LAYERS, THEN YOU MIGHT CREATE THAT SAME ELECTRICAL FUNCTION, BUT IN FACT THAT TERM, REMEMBER, THEY WERE TALKING ABOUT THE CONTACT OF THINGS, AND THE LAYERS THEMSELVES, IF YOU HAVE TWO LAYERS, THEN IT WOULD ALLOW SUCH THINGS AS PLATES AND PADS, WHICH ARE, YOU KNOW, PUT ON THE SURFACE THERE, IF THEY'RE ELECTRICALLY CONNECTED, THEN PRESIDIO WANTS TO SAY THAT THEY'RE ALSO PART OF THE CONTACT, BUT THEY CAN'T BE PART OF THE CONTACT, BECAUSE HOOVER DAM COULD BE PART OF THE CONTACT. SO YOU CAN'T REALLY HAVE IT BOTH WAYS, AND ONE SLIDE THAT I PREPARED THAT SHOWED THE PADS -- OOPS. LET'S SEE.

YES. YOU CAN SEE THAT IN FACT THESE EXTERNAL PADS OVER HERE, PLATES THEY'RE CALLED, AND THEY'RE PADS OVER HERE, THEY'RE ALWAYS CONSISTENTLY, THROUGHOUT THE ENTIRE SPECIFICATION, THEY'RE LISTED DIFFERENTLY. THEY USE DIFFERENT WORDS FOR THEM, AND THEY USE DIFFERENT NUMBERS FOR THEM. SO THEY'RE REALLY NOT PART OF THE CONTACT, AND SO THAT THEY ARE VERY, VERY DIFFERENT THAN IN FACT THE CONTACT ITSELF, AND THEY DON'T PROVIDE THE SAME FUNCTION AS THE CONTACT. THE CONTACT WAS ALWAYS SHOWN TO HAVE THE SAME FUNCTION.

THE COURT: WHAT'S THE FUNCTION OF THE CONTACT?

THE WITNESS: WELL, THE CONTACT ITSELF DOES THREE THINGS. IT CONNECTS UP TO THESE INTERNAL PLATES THAT A CAPACITOR DESIGNER WANTS TO HAVE CONNECTED UP. IT'S TOUCHING THE BODY, BECAUSE IF YOU'RE DIPPING IT IN, YOU HAVE TO TOUCH THE BODY. AND THE THIRD THING IS, IT ALLOWS ELECTRICAL CONNECTION OUTSIDE TO A PRINTED CIRCUIT BOARD, AS WAS SHOWN IN A BUNCH OF OTHER FIGURES.

THE COURT: OKAY. SO THAT'S THE SECOND TERM. CORRECT?

THE WITNESS: CORRECT.

THE COURT: SO WE'RE TALKING ABOUT THE TERM, A CONDUCTIVE FIRST CONTACT DISPOSED EXTERNALLY ON THE DIELECTRIC BODY AND ELECTRICALLY CONNECTED TO THE FIRST PLATE. EVEN THOUGH IT SAYS ELECTRICALLY CONNECTED, YOUR POSITION IS THAT IT SHOULD BE TOUCHING.

THE WITNESS: IT SHOULD BE TOUCHING, YES, AND IN FACT NO CAPACITOR DESIGNER WOULD EVER TRY TO MAKE IT ANY OTHER WAY. IT WOULD BE FOOLISH. I MEAN, SOMEBODY SKILLED IN THE ART, EVEN SOMEBODY NOT SKILLED WOULDN'T EVEN DO THAT.

THE COURT: AND THE EXTERNAL CONDUCTOR -- LET'S SEE. I THINK (PAUSE) -- THE DEFENDANT IN THIS CASE SAYS THAT A CONDUCTIVE LAYER FOR ATTACHING THE CAPACITOR TO AN EXTERNAL CONDUCTOR. WHAT DO YOU MEAN BY THAT?

THE WITNESS: THE EXTERNAL CONDUCTOR WOULD BE THE PRINTS ON THE PRINTED CIRCUIT BOARD. PRINTED CIRCUIT BOARDS HAVE A METALLIC LAYER, A COPPER LAYER, THAT'S ACTUALLY PRINTED ON THE SURFACE, AND THAT WOULD BE, THE TRACE ON THE PRINTED CIRCUIT BOARD WOULD BE THE EXTERNAL CONDUCTOR, AS WE SHOWED BEFORE IN THE SOLDER PICTURE.

THE COURT: RIGHT. THE CONDUCTIVE LAYER, CONTINUING ON, THE CONDUCTIVE LAYER BEING PRESENT ON AN EXTERNAL SURFACE PORTION OF THE SUBSTANTIALLY MONOLITHIC DIELECTRIC BODY. SO YOU'RE TALKING ABOUT 12 AND 13.

THE WITNESS: YES.

THE COURT: AND TOUCHING, AND WE'VE ALREADY TALKED ABOUT THAT, THE CONDUCTIVE FIRST PLATE TO ESTABLISH ELECTRICAL CONNECTION.

THE WITNESS: YES.

THE COURT: AND THAT WOULD BE THE SAME DEFINITION FOR THE SECOND PLATE. IS THAT CORRECT?

THE WITNESS: WELL, FOR THE SECOND PLATE, THERE IS ANOTHER RESTRICTION THAT REALLY HASN'T BEEN, THAT WASN'T PUT IN AND THAT I THOUGHT WOULD BE NECESSARY FROM A TECHNICAL POINT OF VIEW.

THE COURT: WHAT DID YOU ADD?

THE WITNESS: WE ADDED ELECTRICALLY SEPARATE EXTERNAL SURFACE PORTION, BECAUSE IF IN FACT YOU DIP BOTH SIDES IN TOO DEEP, FOR EXAMPLE, IN A DIPPING ACTION, ACTUALLY, YOU WOULD SHORT-CIRCUIT THE TWO LAYERS. IF THESE LAYERS ACCIDENTALLY TOUCHED, IF ONE OF THESE PLATES CAME ALL THE WAY ACROSS, THEN THE DEVICE WOULD OPERATE AS A CIRCUIT, A CIRCUIT, A METALLIC CIRCUIT RATHER THAN AS A CAPACITOR. SO I ADDED THAT PARTICULAR FEATURE IN THERE THAT I THOUGHT WAS NECESSARY. OTHERWISE, THE DEVICE AS CLAIMED WOULDN'T NECESSARILY HAVE TO OPERATE.

THE COURT: ANYTHING ELSE ABOUT THE SECOND -- OTHER THAN THAT, THE SECOND PLATE, THE DEFINITION WOULD BE THE SAME?

THE WITNESS: WELL, ACTUALLY, THE OTHER THING IS THAT THE SECOND CONTACT BEING SUFFICIENTLY CLOSE (PAUSE) -- SOMEWHERE, THAT IS POINTED OUT. IT WAS UP THERE.

MR. AHRENS: I'M JUST GOING TO ASK MAYBE ONE MORE TIME, YOUR HONOR, IF WE COULD HAVE SOME QUESTIONS TO ELICIT THIS TESTIMONY AS OPPOSED TO THE SCRIPT. IT'S JUST BEING PUT ON THE BOARD. TO ME, IT'S NOT AN EXPERT WITNESS GIVING TESTIMONY ABOUT AN OPINION.

THE COURT: WELL, I JUST ASKED HIM A QUESTION AND HE

WAS TRYING TO ANSWER IT. OVERRULED.

WHY DON'T YOU GO AHEAD? I DON'T REMEMBER WHERE WE WERE.

THE WITNESS: OKAY. YES.

THE COURT: THE SECOND CONTACT BEING LOCATED SUFFICIENTLY CLOSE TO THE FIRST CONTACT.

THE WITNESS: WELL, THIS WAS A TERM THAT BOTHERED ME, ACTUALLY, AND, WELL, SUFFICIENTLY CLOSE IS VAGUE. IT'S SUFFICIENTLY CLOSE TO FORM A FIRST FRINGE-EFFECT CAPACITANCE WITH THE FIRST CONTACT. REMEMBER HOW THOSE TWO CONTACTS WRAPPED AROUND THAT LITTLE C CONNECTION, AND WHAT IS SUFFICIENTLY CLOSE? IN THE CALCULATIONS THAT I DID, WE HAD ENORMOUS RATIOS OF DIFFERENCES OF THE FRINGE-EFFECT CAPACITANCE BEING SMALL. SUFFICIENTLY CLOSE DOESN'T GIVE YOU ANY DIMENSIONS. IT'S LIKE, HOW CLOSE IS IT? THERE'S NO DIMENSIONS, NO GEOMETRY GIVEN, FOR EXAMPLE, AND SUFFICIENTLY CLOSE DOESN'T TELL YOU, AND THE FRINGE-EFFECT CAPACITANCE, IT DOESN'T TELL YOU WHAT VALUE OF FRINGE-EFFECT CAPACITANCE YOU NEED. IN FACT, REMEMBER WE SAID THE ELECTRICAL ENGINEER ISN'T GOING TO BE ABLE TO ADJUST IT. HE BUYS THE PARTS AND HAS IT INSTALLED ON HIS CIRCUIT BOARD.

THE COURT: SO THE DEFINITION THAT YOU'RE PROPOSING IS, AN END OF THE FIRST CONDUCTIVE CONTACT AND AN END OF THE SECOND CONDUCTIVE CONTACT ARE POSITIONED IN AN EDGE TO-EDGE RELATIONSHIP IN SUCH PROXIMITY AS TO FORM A DETERMINABLE

CAPACITANCE.

THE WITNESS: RIGHT, WHERE THE CONTACTS COME AROUND, YOUR HONOR, THAT COME AROUND LIKE THIS AND THEN THEY'RE POSITIONED, AND THEN IN RELATIONSHIP SO THAT YOU CAN ACTUALLY MAKE A DETERMINABLE CAPACITOR, SO THAT YOU CAN ACTUALLY MAKE AN APPROXIMATE CALCULATION, IF YOU WILL, OF WHAT YOU EXPECT THE CAPACITANCE TO BE, BECAUSE OTHERWISE IT COULD BE ANYTHING. THAT SORT OF BOTHERED ME.

THE COURT: OKAY, LET'S MOVE ON.

THE WITNESS: AND IN FACT I THINK EVEN THE FRINGE-EFFECT CAPACITANCE IS ALSO DESCRIBED IN THE '356 PATENT. YES, I THINK THAT WAS, YOU KNOW, AND ACTUALLY THEIR DESCRIPTION OF FRINGE-EFFECT CAPACITANCE IS REALLY CONSISTENT WITH THE, THIS SCIENTIFIC DEFINITION. IT'S VERY CLEAN AND IT'S, THAT LITTLE PICTURE THERE IS VERY MUCH LIKE THE LITTLE PICTURE THAT WE PULLED OUT OF JOHN HERBERT'S BOOK.

THE COURT: LET'S GO ON TO THE NEXT ONE. I KNOW THAT ATC'S POSITION IS THAT IT'S INDEFINITE. I MEAN, THE TERM THAT IS IN DISPUTE IS THE FIRST FRINGE-EFFECT CAPACITANCE IS DISPOSED ON THE FIRST SIDE OF THE DIELECTRIC BODY. IS THAT CORRECT? IS THAT THE NEXT TERM?

THE WITNESS: YES.

THE COURT: I DON'T KNOW. I'M SKIPPING AROUND. I THINK WE ALREADY COVERED THAT.

THE WITNESS: WELL, YES.

THE COURT: WE KIND OF COVERED THAT, DIDN'T WE?

THE WITNESS: WELL, YOU KNOW, I USED THE TERM DISPOSED ON, YOU KNOW, TO BE PRESENT ON, REALLY MEANT TO BE PHYSICALLY TOUCHING, AND AGAIN THAT'S EXACTLY WHAT WOULD BE UNDERSTOOD BY SOMEONE WHO'S OF ORDINARY SKILL IN THE ART. THEY WOULD DO IT THAT WAY. THEY WOULD ALWAYS DO IT THAT WAY. SO THAT JUST BEING DISPOSED ON, AGAIN, THAT WASN'T NECESSARILY WHAT I READ IN THERE, IN THE CLAIMS. IT WAS INDEFINITE.

THE COURT: I KNOW I'M KIND OF MOVING A LITTLE FAST.

THE WITNESS: I'M SORRY.

THE COURT: NO, NO.

THE WITNESS: I TEND TO TALK FAST WHEN I GET EXCITED.

THE COURT: THE CERAMIC BODY, WHAT DOES THAT MEAN?

THE WITNESS: THE CERAMIC BODY, ACTUALLY, WHAT WE SHOWED IN THE PICTURE, ALL THESE PLATES THAT WERE SQUEEZED TOGETHER AND SINTERED, IT FORMS A SOLID BLOCK, AND THAT IS CALLED THE CERAMIC BODY ITSELF, SO THAT THE CAPACITORS THAT YOU SEE THERE, THEY HAVE A CERAMIC BODY INSIDE AND THEN THERE'S A --

THE COURT: INSIDE...?

THE WITNESS: INSIDE. THIS WOULD BE THE CERAMIC BODY ITSELF. IT'S TERMED A CERAMIC BODY.

THE COURT: THE ENTIRE THING?

THE WITNESS: THE ENTIRE THING. AFTER IT'S SINTERED, IT'S CALLED THE CERAMIC BODY. IN THE CERAMIC LITERATURE, THIS

IS CALLED A GREEN CERAMIC BECAUSE -- IT'S REALLY NOT GREEN, BUT IT'S CALLED GREEN CERAMIC. THIS IS THE SINTERED BODY OVER HERE, AND IT'S REALLY, IT'S A SOLID BLOCK. IT'S A MONOLITHIC SOLID BLOCK WITH THESE LITTLE METAL SEAMS SHOWING OFF THE SIDE, AND THEN THE CONDUCTIVE PLATES ARE PUT ON. SO THAT'S THE CERAMIC BODY ITSELF.

THE COURT: I INTERRUPTED COUNSEL'S QUESTIONS, BUT GO AHEAD.

THE WITNESS: I'M BETTER AT ANSWERING QUESTIONS.

THE COURT: AND HERE MONOLITHIC CERAMIC STRUCTURE IS ONCE IT'S SINTERED?

THE WITNESS: YES, SINTERED. RIGHT. SINTERING IS AN INTERESTING PHENOMENON, BUT HE HATES IT WHEN I GO OFF.

THE COURT: YOU CAN ASK YOUR NEXT QUESTION. WE SKIPPED OVER A FEW THINGS.

BY MR. GITTES:

Q. DO YOU KNOW WHAT THE TERM HIGH FREQUENCY MEANS TO ONE OF ORDINARY SKILL IN THE ART?

A. THAT'S A TOUGH ONE TO DEFINE, ACTUALLY. FROM THE TECHNICAL DICTIONARY, MCGRAW-HILL SCIENCE TECHNICAL DICTIONARY, THESE ARE THREE TERMS FOR HIGH FREQUENCY THAT COME FROM THE FCC SPECIFICATIONS, AND YOU CAN SEE THAT THERE'S HIGH FREQUENCY, AND THAT'S FROM 3 TO 30 MEGAHERTZ, AND THEN THE VERY HIGH FREQUENCY, THAT'S THE STANDARD, THE LOW-NUMBER TELEVISION CHANNELS, 3 TO 300 MEGAHERTZ, ULTRAHIGH FREQUENCY, WHICH YOU

CALL UHF, AND THAT'S 300 TO 3,000 MEGAHERTZ, SO THAT THE TERM HIGH FREQUENCY CAN HAVE A WHOLE BUNCH OF DIFFERENT MEANINGS. IF SOMEBODY WAS TRYING TO DECIDE IF THEIR CAPACITOR WORKS AT HIGH FREQUENCY, WOULD THEY BE INFRINGING ON THIS PATENT, IT'S PRETTY HARD TO TELL.

Q. DOES THE MEANING OF HIGH FREQUENCY CHANGE WITH ITS APPLICATION?

A. YES, ACTUALLY. DEPENDING UPON WHAT YOU'RE DOING, HIGH FREQUENCY IN AUDIO WOULD BE SOMETHING THAT WE CAN'T HEAR. THAT WOULD BE, FOR EXAMPLE, 20,000 KILOHERTZ. HIGH FREQUENCY COULD BE ONE GIGAHERTZ, FOR EXAMPLE, IN SOME APPLICATIONS. IN OTHER APPLICATIONS, SOME WORK THAT I'M DOING NOW, MILLIMETER WAVE IMAGING, 20 GIGAHERTZ IS CONSIDERED LOW FREQUENCY. IN FACT, OUR SPECTROMETERS, THEY START AT 30 GIGAHERTZ AND GO UP, SO THAT THERE IS -- REALLY, THE TERM IS VERY, VERY SUBJECTIVE, AND IT REALLY WOULD BE VERY DIFFICULT TO FIGURE OUT WHAT WAS MEANT.

Q. DOES THE '356 PATENT DEFINE HIGH FREQUENCY?

A. NO, IT DOESN'T. I LOOKED THROUGH AND THERE REALLY -- HIGH FREQUENCY TERMS ARE USED, THEY DEFINITELY ARE USED, BUT THEY'RE NOT DEFINED. THERE IS ONE TERM, ONE PHRASE I REMEMBER WHERE I THINK IT WAS 400 KILOHERTZ -- I THINK MR. AHRENS TALKED ABOUT THAT -- TO 100 GIGAHERTZ. WELL, THAT'S WISHFUL THINKING. THERE'S NOTHING THAT WORKS OVER THAT RANGE. I MEAN, EVEN -- I MEAN, A GOOD SCIENTIST WORKING IN HIGH-FREQUENCY STUFF KNOWS THAT ALL THOSE LITTLE CIRCUIT DRAWINGS THAT WERE IN THE

PATENTS, THEY DON'T HAVE ANY MEANING AT ALL ONCE YOU GET BEYOND 15 OR 20 GIGAHERTZ.
Q. DOES THE '356 PATENT DEFINE HIGH-FREQUENCY PERFORMANCE OR WHAT HIGH-FREQUENCY PERFORMANCE MEANS?
A. NO, IT REALLY DOESN'T, ACTUALLY. IN FACT, IT DOESN'T DEFINE HIGH-FREQUENCY PERFORMANCE. WHAT THEY DO SAY, AND I REMEMBER READING THAT, AND IT WAS, THEY WERE SAYING THAT IT MAY AFFECT HIGH-FREQUENCY PERFORMANCE, BUT THEY REALLY DON'T SAY HOW. DEPENDING UPON WHAT IT IS, I MEAN, THIS MAY AFFECT. THERE'S NO DIMENSIONS GIVEN. THERE'S NO GEOMETRIES GIVEN. THERE'S NO RANGES OR FREQUENCIES GIVEN. IN FACT, THE CHART THAT'S IN THE PATENT, I MEAN, I WOULDN'T LET ONE OF MY STUDENTS PUT THAT IN HIS THESIS. I MEAN, THERE'S NO NUMBERS ON THE AXIS. YOU CAN'T DO THAT. THIS ESSENTIALLY, THIS IS REALLY WISHFUL THINKING. IT'S LIKE GIVING SOMEBODY A BAG OF FLOUR AND A BAG OF SUGAR AND SAYING, MAKE A CAKE, IT'LL TASTE GOOD.
Q. DOES THE PATENT PROVIDE ANY DATA ABOUT THE HIGH-FREQUENCY PERFORMANCE OF ANY CAPACITOR DISCLOSED IN THE PATENT?
A. I DIDN'T SEE ANY DATA AT ALL, NO.
Q. HOW DOES THE ABSENCE OF SUCH DATA AFFECT WHAT PRESIDIO'S PROPOSED CONSTRUCTION IS, IN YOUR OPINION?
A. HOW DOES THE ABSENCE? WELL, THE ABSENCE OF DATA MAKES IT IMPOSSIBLE TO TELL WHAT THE, WHAT THE HIGH-FREQUENCY FRINGE-EFFECT CAPACITANCE IS, AND THE DEFINITION, THERE IS A DEFINITION, I BELIEVE, IN THERE OF FRINGE-EFFECT CAPACITY. I

THINK -- DIDN'T I HAVE THAT ON ONE OF THE SLIDES? DIDN'T WE PUT THAT ON ONE OF THE SLIDES? THIS *MAY AFFECT* DOESN'T REALLY TELL YOU HOW. AND AGAIN THEY SAY THAT THE CAPACITANCE OVER HERE CAN BE ADJUSTED TO OPTIMIZE HIGH FREQUENCY, AND AGAIN IT DOESN'T SAY ADJUSTED HOW. THERE'S NO NUMBERS. THERE'S NO FREQUENCY RANGE. THERE'S NO GEOMETRIES GIVEN. THERE'S NO DIELECTRIC CONSTANTS GIVEN. I MEAN, TYPICAL CERAMIC MATERIALS THAT ARE MADE IN THESE CAPACITORS CAN VARY IN DIELECTRIC CONSTANTS BETWEEN 10 AND 10,000. THAT CHANGES EVERYTHING.

THE COURT: I'M GOING TO SKIP TO ANOTHER TERM.

THE WITNESS: OKAY. SURE.

THE COURT: THEN I NEED TO TAKE A SHORT BREAK. THE DIELECTRIC BODY HAS A HEXAHEDRON SHAPE.

THE WITNESS: OKAY. WELL (PAUSE) --

THE COURT: I MEAN, PRESIDIO SAYS SHAPE MEANS SHAPE, NOT SIDES.

THE WITNESS: THEY SAY HEXAHEDRON. WELL, AGAIN, THE TERM ITSELF IS GRAMMATICALLY CORRECT AND IT'S (PAUSE) --

THE COURT: I MEAN, THERE ARE SIX SIDES.

THE WITNESS: IT DOESN'T REALLY HAVE ANY MEANING. I WOULD SAY THAT THE DIELECTRIC BODY HAS SIX SIDES, BECAUSE IF YOU TAKE A LOOK AT THE DEFINITION FROM A TECHNICAL DICTIONARY OF A HEXAHEDRON, WE HAVE OVER HERE SIX DIFFERENT HEXAHEDRONS, AND WE'RE NOT TALKING ABOUT LITTLE PERTURBATIONS OR LITTLE BLIPS ON THE SURFACE. WE'RE TALKING ABOUT, WHICH ONE OF THESE

SHAPES IS IT? AND THAT TERM IS JUST SUBJECTIVE AND INDEFINITE. I MEAN, AND THIS IS ONLY SIX OF MANY. THESE WERE JUST EXAMPLES. AND AGAIN, THERE'S ANOTHER FACTOR. I BELIEVE THEY PUT IN THEIR THING ABOUT THE MAJOR AND MINOR SURFACES. HOW DO YOU DETERMINE, WHO DECIDES WHAT'S A MAJOR SURFACE AND WHAT'S A MINOR SURFACE? YOU REALLY CAN'T TELL.

THE COURT: RIGHT. THEY'RE DEFINING IT AS MAJOR SURFACES.

THE WITNESS: RIGHT, BUT ALL OF THESE HAVE WHAT I (PAUSE) -- LET'S SEE. THEY HAVE SIX SURFACES; THAT'S FOR SURE.

THE COURT: IS THERE ANYTHING ELSE THAT YOU WOULD LIKE TO BRING OUT IN CONCLUSION? BECAUSE WE'RE GOING TO TAKE A SHORT BREAK. THEN WE CAN GO BACK TO THIS.

MR. GITTES: JUST ONE THING, YOUR HONOR.

BY MR. GITTES:

Q. WHAT IS WRONG WITH PRESIDIO'S STATEMENT THAT FRINGE-EFFECT CAPACITANCE IS DEFINED AS OPTIMIZING HIGH-FREQUENCY PERFORMANCE OF THE DEVICE?

A. WELL, AGAIN, THAT PARTICULAR THING DOESN'T REALLY HAVE ANYTHING TO STAND ON. I TRIED TO PREPARE AN EXAMPLE. IN THE NEXT SLIDE -- PUT UP THE HOURGLASS THING. OPTIMIZING HIGH-FREQUENCY PERFORMANCE. SUPPOSE WE THINK THIS IS A CREATIVE CAPACITOR, IF YOU WILL, YOUR HONOR. THIS CHAMBER OVER HERE WE CAN THINK OF AS FRINGE-EFFECT CAPACITANCE. SEE CAPACITANCE, AND EACH OF THE GRAINS OF SAND WOULD BE LITTLE

CHARGES MOVING BACK AND FORTH IN THIS CIRCUIT. AND IN FACT IF WE NOW START TO MOVE THIS THING, YOUR HONOR, BACK AND FORTH, IF WE START TO MOVE IT UP AND DOWN, WE MOVE THE CHARGE BACK AND FORTH. IF WE MOVE IT AGAIN, WE MOVE THE CHARGE IN THE POWER SUPPLY INTO THE CAPACITANCE. BUT IN THE MIDDLE THERE, THE LITTLE SECTION IN THE MIDDLE COULD BE PROPORTIONAL TO A TERM CALLED THE INDUCT. IT SORT OF LIMITS THE FLOW OF CHARGE THROUGH, AND IF WE NOW START TO GO BACK AND FORTH AT VERY HIGH FREQUENCY, WE'RE NOT GOING TO GET ANY SAND OR CHARGE INTO OUR CAPACITANCE. SO JUST HAVING A CAPACITANCE MAY NOT HAVE ANY EFFECT ON HIGH-FREQUENCY PERFORMANCE AT ALL. JUST AS A CAPACITANCE EXISTS, THERE ARE OTHER FACTORS IN THE DESIGN, AND THAT'S AN INDEFINITE DEFINITION. IT JUST WOULDN'T WORK.

MR. GITTES: I CAN CONCLUDE AT THIS POINT, YOUR HONOR.

THE COURT: OKAY, AND I'LL GIVE YOU ONE LAST OPPORTUNITY AFTER PRESIDIO, BUT LET'S JUST TAKE A REALLY QUICK BREAK. IT'S ABOUT TEN MINUTES TO 11:00. LET'S JUST BREAK UNTIL 11:00. THEN WE'LL HAVE A MOMENT OR SO.

MR. GITTES: THANK YOU, YOUR HONOR.

THE COURT: OKAY.

(RECESS)

THE COURT: OKAY. READY TO PROCEED, COUNSEL?

MR. AHRENS.

MR. AHRENS: I WOULD LIKE TO ADDRESS A COUPLE THINGS BRIEFLY, YOUR HONOR, THEN CALL DR. DOUGHERTY BACK TO THE STAND, BUT GIVEN THE NATURE OF THE MIXED ARGUMENT SLASH INTERROGATION, MY RESPONSE MIGHT BE A MIXED ARGUMENT SLASH CROSS-EXAMINATION.

THE COURT: THAT'S FINE.

MR. AHRENS: INITIALLY, LET ME SAY THAT -- WELL, WE DIDN'T REALLY ADDRESS IT WHEN I STOOD UP, BUT IT WAS ADDRESSED, THIS WHOLE ISSUE OF STANDING. THERE WAS ANOTHER SUIT FILED IN FEBRUARY. THERE'S NO ISSUE OF STANDING WITH RESPECT TO THAT SUIT. WE DON'T CONCEDE THAT THERE'S AN ISSUE IN THIS CASE. HOWEVER, RATHER THAN FIGHT ABOUT IT, WHETHER THERE'S SOME OPERATION OF CALIFORNIA LAW, WE REFILED THE LAWSUIT. THE ORIGINAL IS HERE. HE'LL BE SERVED IF COUNSEL WILL ACCEPT IT. OTHERWISE, WE'LL SERVE IT VIA THE REGULAR WAY.

THE COURT: YES, I SEE IT WAS FILED. I HAVE IT IN MY INBOX, AND THAT WAS ONE THING I WANTED TO ADDRESS. I KNOW THAT ATC RAISED STANDING, BUT THERE'S NO PROCEDURAL MECHANISM FOR ME TO RULE ON IT. THERE'S NO MOTION TO DISMISS. THERE'S NO, NOTHING. SO I CAN'T ADDRESS IT IN THE CONTEXT OF THESE PROCEEDINGS.

MR. AHRENS: I UNDERSTAND THAT, EXACTLY. TYPICALLY, A DEFENDANT WHO HAS AN ISSUE WITH STANDING RAISES IT IN A MOTION TO DISMISS. THE CASE CITED BY THE OTHER SIDE, THIS QUANTUM CORPORATION CASE FROM THE NORTHERN DISTRICT OF CALIFORNIA, IS EXACTLY THAT. IT WAS A MOTION TO DISMISS. WE DON'T HAVE A MOTION TO DISMISS. SO WE HAVE THIS LAWSUIT. UNFORTUNATELY, WHEN WE FILED IT AND WE NOTICED THAT THIS WAS A RELATED CASE, IT DIDN'T GET ASSIGNED TO YOU, FOR SOME REASON. SO WE HAVE --

THE COURT: IT COMES LATER. ACTUALLY, I WAS JUST GOING THROUGH MY INBOX. THE CASE WAS FILED. IT WAS ASSIGNED TO ANOTHER JUDGE, BUT IT'S NOT CONSOLIDATED OR COMES TO ME UNTIL THE OTHER JUDGE AND I SIGN OFF ON IT, AND THERE SHOULDN'T BE A PROBLEM. SO IT WILL COME TO ME.

MR. AHRENS: OKAY. SO WE FILED THE NOTIFICATION YESTERDAY OF RELATED CASES IN BOTH OF THE TWO SO THAT, HOPEFULLY, THAT WILL HAPPEN, AND THEN, AS IT COMES TO YOU, WE'LL MOVE FOR IT TO BE CONSOLIDATED. IF THE ORIGINAL CASE IS DISMISSED FOR LACK OF STANDING, THE SECOND CASE CAN PROCEED. THERE'S THE SAME PATENT, SAME PARTIES. NOTHING NEEDS TO CHANGE. WE CAN EVEN ADOPT THE SAME SCHEDULE. THIS IS SET FOR A HEARING IN JUNE. OUR MOTION TO CONSOLIDATE, I'M SURE THERE'S GOING TO BE SOME VOCIFEROUS RESPONSE, AND THEN WE CAN REPLY, AND THEN WE'LL BE HERE TALKING ABOUT THIS, BUT THAT'S THE SITUATION. THEY HAVE THE PAPERS AND THAT'S HOW WE INTEND TO PROCEED.

THE COURT: IS IT YOUR POSITION THAT BEFORE THE MOTION TO CONSOLIDATE IS RULED ON, THAT WE SHOULD HAVE THE CONSTRUCTION OF THE CLAIMS DECIDED?

MR. AHRENS: I MEAN, IN MY VIEW, LET'S JUST SAY THE SCENARIO IS THAT THE ORIGINAL CASE GETS DISMISSED. LIKE THERE WAS A MOTION TO DISMISS AND YOU DISMISS IT. IT WOULD BE A DISMISSAL WITHOUT PREJUDICE. THERE'S NOTHING TO STOP US FROM

REFILING IT. IT'S NOT A DETERMINATION OF THE CASE ON THE MERITS. SO JUST FILE A NEW LAWSUIT AND START OVER AGAIN. RATHER THAN STARTING OVER AGAIN, WE'RE JUST GOING TO CONSOLIDATE THE CASES. SO THE CLAIM CONSTRUCTION IS GOING TO HAPPEN. IT'S GOING TO HAPPEN EITHER IN CONNECTION WITH THIS HEARING OR IN SOME OTHER CONNECTION, BUT WE'RE ALREADY PROCEEDING, AND THERE'S NO DIFFERENCE IN THE CASES.

THE QUANTUM CASE THAT THEY CITED TO, THE VERY LAST LINE BY THE JUDGE SAYS, WELL, YOU KNOW, THERE'S NO PREJUDICE FROM THIS RULING DISMISSING THE EARLIER CASE BECAUSE THERE'S A PARALLEL SUIT. SO IT'S THE SAME SITUATION. I DON'T SEE HOW THEY CAN CLAIM THERE'S ANY PREJUDICE TO THEM. NOTHING WOULD HAVE HAPPENED. BUT, NONETHELESS, THAT'S FOR ANOTHER DAY, AND THE PAPERWORK, WE AT LEAST FILED TO CONSOLIDATE. WE STILL HAVE NOT SEEN A MOTION TO DISMISS. MAYBE THAT WILL BE THE RESPONSE, SO.

THE COURT: OKAY. LET'S MOVE ON.

MR. AHRENS: WITH RESPECT TO THE ISSUE OF INDEFINITENESS, THERE WAS SOME DISCUSSION ABOUT THAT FROM DR. DOUGHERTY, AND IT'S IMPORTANT TO NOTE THAT IN DATAMIZE, LLC VS. PLUMTREE, 417 F.3D 1342, THE DEFINITENESS REQUIREMENT UNDER SECTION 112 DOESN'T REQUIRE ABSOLUTE CLARITY. THE DEFINITENESS OF CLAIM TERMS DEPENDS ON WHETHER THOSE TERMS CAN BE GIVEN ANY REASONABLE MEANING. THERE'S A HIGH BURDEN OF PROOF TO SHOW INDEFINITENESS BECAUSE THERE'S A PRESUMPTION OF VALIDITY IN THE

PATENT CLAIM. THE PATENT EXAMINER, WHO'S TRAINED IN HIS FIELD, SPECIFICALLY TRAINED IN PATENT LAW AND THE PROCESS OF ISSUING CLAIMS, HAS DONE HIS JOB, AND THERE'S A PRESUMPTION OF THAT. SO TO COME ALONG LATER AND SAY, *WELL, I CAN'T UNDERSTAND IT, I'M NOT SURE I WOULD KNOW WHETHER I INFRINGED*, THAT'S NOT THE TEST FOR INDEFINITENESS.

THE CLAIM IS DEFINITE AS ONE SKILLED IN THE ART WOULD UNDERSTAND THE CLAIM, THE KEY PHRASE, WHEN READ IN LIGHT OF THE SPECIFICATION. THE TESTIMONY ELICITED BY DR. DOUGHERTY WAS NOT ASKED IN THE CONTEXT OF THE SPECIFICATION. IT WAS, WHAT DOES HIGH FREQUENCY MEAN? AND HE POINTS TO SOME SORT OF DICTIONARY DEFINITION. HE DOESN'T LOOK AT THE PATENT, WHICH SAYS HIGH FREQUENCY PAREN GIGAHERTZ. IT DOES GIVE A DEFINITION. IT DOES PROVIDE CONTEXT.

SO, WHEN WE START DIVORCING OURSELVES FROM THE SPECIFICATION OF THE PATENT, WHICH GIVES THE EXAMPLE OF A GAP DISTANCE OF 2/1000THS OF AN INCH AS AN EXAMPLE, IT GIVES A RANGE OF BROADBAND FREQUENCIES THAT CAN BE OPERATED WITHIN. IT SAYS, HIGH-FREQUENCY PERFORMANCE PARENTHETICALLY MEANS REDUCED RESISTANCE, REDUCED INDUCTANCE. WE'VE GOT THIS INSERTION LOSS THAT'S SHOWN IN A DIAGRAM, AND IT'S DESCRIBED AT LENGTH IN COLUMN 7, AND AS I WENT OVER THAT BEFORE. SO THERE ARE MANY INSTANCES WHERE THE CONTOURS OF THE CLAIMS ARE KNOWN FROM THE SPECIFICATION.

AND THE LAST CITE THAT I GAVE YOU OR THE LAST CASE

THAT I WAS REFERRING TO WAS INVITROGEN CORP. VS. BIOCREST, 424 F.3D, 1374, WHERE IT FURTHER STATES, EVEN IF IT IS A FORMIDABLE TASK TO UNDERSTAND THE CLAIM AND THE RESULT IS NOT UNANIMOUSLY ACCEPTED, AS LONG AS THE BOUNDARIES OF THE CLAIM ARE UNDERSTOOD, IT IS SUFFICIENTLY CLEAR TO AVOID INVALIDITY OR INDEFINITENESS. THE PROOF OF INDEFINITENESS REQUIRES SUCH AN EXACTING STANDARD BECAUSE CLAIMS CONSTRUCTION OFTEN POSES A DIFFICULT TASK. THAT'S THE HALLIBURTON CASE CITED BY THE DEFENDANT.

SO THESE PRINCIPLES OF INDEFINITENESS, WHICH CLEARLY DR. DOUGHERTY ISN'T FAMILIAR WITH, BECAUSE HE'S NOT A PATENT LAWYER, YET HE'S GIVING LEGAL CONCLUSIONS, THE CONCLUSION OF INDEFINITENESS IS A CONCLUSION OF LAW THAT IS FOR THE COURT TO MAKE. HIS OPINION ON WHAT HIS LEGAL CONCLUSION IS WITHOUT A BASIS IN LEGAL TRAINING, I THINK, SHOULD BE GIVEN LITTLE OR NO WEIGHT.

IN CONJUNCTION WITH CLAIM CONSTRUCTION AS A WHOLE, AS YOU KNOW, THE USE OF EXTRINSIC EVIDENCE IS REALLY THE VERY LAST RESORT. HIS TESTIMONY IS CLASSIC EXTRINSIC EVIDENCE. HE IS THE, SOMEHOW AFFILIATED WITH THIS ORGANIZATION CALLED CTW, CTS, WHICH WAS ON HIS FIRST SLIDE. I THINK -- MAYBE WE'LL FIND OUT -- HE WAS A CONTRIBUTING MEMBER. I'M NOT SAYING THERE'S ANYTHING IMPROPER THERE, BUT THERE IS THE RISK OF, YOU KNOW, AN INDEPENDENT, A NON-INDEPENDENT EXPERT OR EVEN AN INDEPENDENT EXPERT BEING PAID FOR HIS OPINIONS WHEN WHAT WE'RE REALLY

LOOKING FOR IS, WHAT DOES THE PATENT SAY?

THE COURT: OKAY, I UNDERSTAND. I KNOW WHAT THE LAW IS, SO LET'S PROCEED. DID YOU WANT TO CALL HIM? I'M GOING TO GO BACK TO SOMETHING THAT I QUESTIONED THE DOCTOR ABOUT AND THAT YOU AND I DISCUSSED, AND THAT IS THE PHYSICAL CONNECTION AS OPPOSED TO THE ELECTRICAL CONNECTION --

MR. AHRENS: YES.

THE COURT: -- AND THERE'S STILL A BIG DISPUTE ABOUT THAT, AND ATC JUST SAYS THAT IT'S PRACTICALLY IMPOSSIBLE TO JUST HAVE AN ELECTRICAL CONNECTION AND NOT HAVE THE PHYSICAL CONNECTION.

MR. AHRENS: I WOULD LIKE TO CALL DR. DOUGHERTY FOR A FEW THINGS.

THE COURT: OKAY.

MR. AHRENS: AND MAYBE IF YOU ASK ME A QUESTION, THEN I'LL USE HIM.

THE COURT: SURE. I MEAN, THAT'S SOMETHING THAT I DON'T MIND YOU ASKING HIM ABOUT.

SO IF YOU'LL RESUME THE STAND, SIR, AND I REMIND YOU YOU'RE STILL UNDER OATH.

(THE WITNESS RESUMES THE WITNESS STAND.)

THE COURT: SO WE CAN PROCEED.

CROSS-EXAMINATION BY MR. AHRENS:

Q. GOOD MORNING, DR. DOUGHERTY.

A. GOOD MORNING.

Q. HOW ARE YOU?
A. FINE.
Q. YOU INDICATED THAT YOUR UNDERSTANDING OF THE CLAIM CONSTRUCTION PROCESS CAME THROUGH YOUR COUNSEL, RIGHT?
A. YES.
Q. AND YOU HAVEN'T PARTICIPATED IN A CLAIM CONSTRUCTION BEFORE IN ANOTHER CASE, RIGHT?
A. I HAVE NEVER DONE THIS BEFORE.
Q. OKAY. NOW, YOU TALKED ABOUT WHO A PERSON HAVING ORDINARY SKILL IN THE ART IS, AND YOU SAID IT'S USUALLY A DESIGNER OF MULTILAYER CAPACITORS, I BELIEVE. IS THAT CORRECT?
A. YES.
Q. DO DESIGNERS OF MULTILAYER CAPACITORS NEVER INTERACT WITH THEIR CUSTOMERS TO SEE WHAT THE NEEDS ARE OF THE CUSTOMERS SO THAT THEY CAN DESIGN THE CAPACITOR FOR THAT PURPOSE? IS THAT JUST SOMETHING THAT DOESN'T HAPPEN OR DOES THAT COLLABORATION HAPPEN?
A. IT DOES HAPPEN.
Q. OKAY. SO, ACTUALLY, THE DESIGNER WOULD BE TALKING TO THE USER TO FIND OUT WHAT IT IS THEY WANT AND WHAT THEY'RE TRYING TO ACCOMPLISH. CORRECT?
A. UH (PAUSE).
Q. OR DO YOU KNOW?
A. IN MY PERSONAL EXPERIENCE, USUALLY, THE MARKETING PEOPLE SPEAK TO THE CUSTOMERS MOSTLY, AND THE ACTUAL DESIGN ENGINEERS,

IN MY PERSONAL EXPERIENCE, MANY OF THEM DON'T EVER GET TO TALK TO A CUSTOMER.
Q. OKAY.
A. BUT OCCASIONALLY THE CHIEF ENGINEER WOULD GET TO TALK TO THE CUSTOMER, BUT THE OTHER DESIGN ENGINEERS TYPICALLY WOULDN'T.
Q. AND THE PURPOSE OF THAT IS CLEARLY FOR THE DESIGN ENGINEER TO FIND OUT WHAT IT IS THAT THE CUSTOMER IS INTERESTED IN TRYING TO ACCOMPLISH, RIGHT?
A. USUALLY, THAT'S A TECHNICAL MARKETING PERSON, YES.
Q. OKAY, AND THAT INFORMATION CAN BE USED BY THE DESIGNER TO AFFECT HOW THEY DESIGN THE CAPACITOR. CORRECT?
A. YES.
Q. SO IT'S NOT AS THOUGH THERE'S NO RELATIONSHIP BETWEEN USERS AND DESIGNERS OF CAPACITORS. ISN'T THAT RIGHT?
A. THERE'S A RELATIONSHIP, OF COURSE, BETWEEN THE CUSTOMER AND THE SUPPLIER.
Q. NOW, YOU INDICATED --
THE COURT: LET ME JUST STOP YOU THERE. IT'S ABOUT 11:15 RIGHT NOW. I'LL GIVE YOU A HALF-HOUR, AND THEN I'LL GIVE ATC ANOTHER HALF-HOUR. SO WE'LL GO TO 12:15, AND THAT'S IT.
MR. AHRENS: IT WILL ONLY TAKE ME TEN MINUTES, YOUR HONOR.
THE COURT: THAT'S FINE. I DON'T WANT YOU TO RUSH, BUT I CAN'T GO -- I MEAN, I HAVE TWO MATTERS THAT I HAD

SCHEDULED AT 12:00 AND WE'LL GO TILL ABOUT 12:15.
GO AHEAD.
BY MR. AHRENS:
Q. YOU HAD INDICATED -- DO YOU HAVE YOUR BOOKLET WITH YOUR LITTLE SCRIPT?
A. NO, I DON'T. I DON'T HAVE THE SLIDES HERE.
MR. AHRENS: MAY I HAND THE WITNESS THIS BOOKLET?
THE COURT: YES.
BY MR. AHRENS:
Q. I'M GOING TO ASK YOU TO LOOK TO SLIDE NUMBER 7, I BELIEVE. IT'S THE ONE THAT SHOWS THE CAPACITANCE. DO YOU SEE THAT?
A. YES.
Q. AND YOU INDICATE BY THE GREEN CFE ON THE BOTTOM OF PAGE 7 THAT THERE'S SOME FRINGE-EFFECT CAPACITANCE, RIGHT?
A. YES.
Q. BUT YOU COULDN'T DETERMINE WHAT THE VALUE OF THAT IS JUST BY LOOKING AT THIS DRAWING, RIGHT?
A. NOT FROM THE DRAWING ITSELF.
Q. AND THE PATENT DOESN'T DESCRIBE ANY DIMENSIONS OR ANYTHING ELSE THAT WOULD ALLOW TO YOU CALCULATE THAT, RIGHT?
A. NO, THE PATENT DOESN'T.
Q. SO, BASED ON YOUR OWN DEFINITION OF FRINGE-EFFECT CAPACITANCE BEING A DETERMINABLE AMOUNT, YOU DON'T EVEN KNOW IF THIS WOULD BE MEETING YOUR OWN DEFINITION OF A DETERMINABLE AMOUNT, RIGHT? BECAUSE YOU JUST DIDN'T TEST IT AND YOU DON'T

KNOW. CORRECT?
A. I WOULDN'T -- IF I DIDN'T KNOW THE DIELECTRIC CONSTANT OF THE MATERIAL, I COULDN'T DETERMINE IT. YES, YOU'RE CORRECT.
Q. OKAY. SO, IN CONJUNCTION WITH THE DRAWING JUST ABOVE THAT WHICH SHOWS THE FRINGE-EFFECT CAPACITY --
THE COURT: WHAT PAGE ARE YOU ON?
MR. AHRENS: I'M ON PAGE 7, YOUR HONOR.
THE WITNESS: SLIDE 7.
THE COURT: OKAY.
MR. AHRENS: ACTUALLY, NOW PAGE 8.
THE COURT: OKAY.
MR. AHRENS: NOW, I'M GOING TO PAGE 8.
BY MR. AHRENS:
Q. SO, BELOW THE DRAWING, IT'S GOT CFE IS EQUAL TO APPROXIMATELY 4.2 PICOFARADS. I MEAN, THOSE NUMBERS DON'T COME FROM THE PATENT, RIGHT? YOU JUST CAME UP WITH THOSE AS A RELATIVE RATIO.
A. NO. ACTUALLY, I ACTUALLY TOOK THE ACTUAL PHYSICAL DIMENSIONS FOR AN 0603 COMMERCIAL CAPACITOR.
Q. BUT THIS IS A DRAWING FROM A PATENT. SO HOW DID YOU CORRELATE TO THE 0603 PRODUCT? YOU KNOW, WHY IS THE 0603 PRODUCT -- IT'S MANUFACTURED BY WHOM?
A. ACTUALLY, IT'S THE SAME SIZE FOR EVERY MANUFACTURER.
Q. WHO IS THE PRODUCT A PRODUCT OF? WHOSE PRODUCT IS THE 0603?

A. THE 0603 CAPACITOR, I THINK I TOOK THE DIMENSIONS FROM A MURATA CAPACITOR, BUT THEY'RE THE SAME DIMENSIONS FOR A PRESIDIO CAPACITOR.
Q. WHAT DOES THAT HAVE ANYTHING TO DO WITH FIGURE 12 ON PAGE 8 OF YOUR REPORT?
A. FIGURE 12 WAS SELECTED AS A FIGURE. IT'S THE ONE I THOUGHT WAS THE EASIEST TO EXPLAIN FROM A TEACHING POINT OF VIEW HOW THINGS ARE.
Q. SO THE 4.2 PICOFARADS SHOWN BELOW FIGURE 12 AREN'T REALLY A MEASUREMENT OF THE FRINGE-EFFECT CAPACITANCE ON WHAT'S SHOWN ON FIGURE 12; IT'S JUST SOMETHING ELSE.
A. IT'S EXACTLY LIKE I TESTIFIED. IT WAS FOR AN 0603 CAPACITOR.
Q. OKAY. SO THE NUMBERS BELOW THE FIGURE AREN'T FOR WHAT'S SHOWN IN THE FIGURE. CORRECT?
A. NO.
Q. OKAY.
A. THEY'RE --
Q. SO IS THAT A LITTLE BIT MISLEADING, TO PUT THOSE FIGURES ON THE SAME PAGE AS THE DRAWING?
A. I GUESS IF I (PAUSE) --
Q. YOU WEREN'T TRYING TO BE MISLEADING.
A. NO, I WASN'T. I SAID IT WAS AN 0603 CAPACITOR.
Q. OKAY.
A. I THINK THAT'S IN MY STATEMENT AS WELL.

Q. NOW, WOULD YOU TURN TO PAGE 13 OF YOUR BOOKLET? THIS IS WHERE YOU HAVE THE MONOLITHIC CERAMIC CAPACITOR, THE DEFINITION FROM THE MCGRAW-HILL DICTIONARY.
A. YES.
Q. THE ACTUAL CLAIM TERM THAT'S IN DISPUTE, HOWEVER, IS NOT MONOLITHIC CERAMIC CAPACITY, RIGHT? IT'S MONOLITHIC DIELECTRIC BODY. SO YOU'RE USING A DEFINITION OF A PHRASE WHICH ISN'T ACTUALLY THE PHRASE IN DISPUTE. ISN'T THAT RIGHT?
A. I USED THIS PHRASE BECAUSE IT HAD THE SAME DESCRIPTION OF THE MONOLITHIC BODY, THE INTERLEAVED DIELECTRIC AND METAL-FILM LAYERS.
Q. BUT IS IT TRUE OR IS IT NOT TRUE THAT THIS DEFINITION IS FOR MONOLITHIC CERAMIC CAPACITOR AND WHAT WE'RE TRYING TO DEFINE IS MONOLITHIC DIELECTRIC BODY MODIFIED BY THE WORD SUBSTANTIALLY? I MEAN, THEY'RE JUST NOT THE SAME PHRASES, RIGHT?
A. IT'S NOT THE SAME PHRASE, OBVIOUSLY. DIFFERENT WORDS.
Q. SO THERE'S MAYBE SOME LACK OF APPLICABILITY BECAUSE IT'S NOT REALLY THE SAME PHRASE AT ALL.
A. I THOUGHT IT WAS APPLICABLE --
Q. OKAY.
A. -- BECAUSE THAT PARTICULAR PHRASE IS USED CONSISTENTLY IN THE SPECIFICATION, SO THAT'S WHY I THOUGHT IT MADE SENSE.
Q. THE PHRASE MONOLITHIC DIELECTRIC BODY.
A. MONOLITHIC CERAMIC CAPACITOR IS ALSO USED.

Q. SO YOU JUST EQUATE THE TWO?
A. NO, I DIDN'T. I JUST THOUGHT IT WAS APPROPRIATE. I DIDN'T EQUATE THEM. THEY'RE DIFFERENT.
Q. OKAY. SO THEY'RE NOT EQUATED, BUT YET THE DEFINITIONS ARE SIMILAR ENOUGH, YOU JUST GO AHEAD AND USE IT.
A. UH-HUH.
Q. AND WITH RESPECT TO THIS DEFINITION OF THE PHRASE NOT IN DISPUTE, A CAPACITOR THAT CONSISTS OF THIN DIELECTRIC LAYERS INTERLEAVED WITH STAGGERED METAL-FILM ELECTRODES COMPRESSED AND SINTERED TO FORM A SOLID MONOLITHIC BLOCK, AND YOU HAD A DESCRIPTION OF THAT, RIGHT? SO THEN THE NEXT --
THE COURT: WHERE ARE YOU? I MEAN, YOU'RE GOING TOO FAST AND I'M NOT FOLLOWING YOU.
MR. AHRENS: I'M ON PAGE 13 STILL, THIS DEFINITION.
THE COURT: OH, OKAY.
MR. AHRENS: I'M SORRY. I WAS READING THIS DEFINITION QUICKLY.
BY MR. AHRENS:
Q. IN THE PATENT IN SUIT, AFTER YOU GOT THE SINTERED BLOCK WITH THE INTERLEAVED LAYERS, THEN IT'S DIP-COATED TO GET THE CONDUCTORS, RIGHT?
A. YES.
Q. OKAY. AND IN YOUR EXPERIENCE, IS THERE JUST ONE LAYER OF COATING OR IS THERE MULTIPLE LAYERS, SOMETIMES OF DIFFERENT MATERIALS, LIKE NICKEL, TIN, LEAD?

A. THE, IN THE TECHNICAL LITERATURE, AND IT'S --
Q. SPECIFICALLY, I ASKED, IN YOUR EXPERIENCE, YOUR EXPERIENCE --
A. YES.
Q. -- ACTUAL DIRECT EXPERIENCE, IS IT ONE SINGLE LAYER OR IS IT A BUILD-UP OF LAYERS THAT MAY OR MAY NOT BE OF THE EXACT SAME MATERIAL TO FORM THAT PORTION?
A. THE TERMINATIONS, AS THEY'RE CALLED, OFTEN HAVE MULTIPLE MATERIALS.
Q. AND THE PURPOSE OF THAT IS TO CREATE DIFFERENT PROPERTIES IN THE TERMINATIONS, SUCH AS SOME HARD MATERIALS AND SOME SOFTER MATERIALS, SOME LESS EXPENSIVE MATERIALS. YOU MIGHT HAVE GOLD, WHICH IS VERY EXPENSIVE, AND YOU MIGHT USE, THEN, NICKEL TO LOWER THE COSTS. ISN'T THAT CORRECT?
A. YES. TERMINATIONS HAVE MULTIPLE MATERIALS AND MULTIPLE APPLICATIONS, JUST LIKE YOU SAID.
THE COURT: BY THE TERMINATION, WHAT ARE YOU REFERRING TO?
THE WITNESS: IN THE -- FOR SOMEONE WHO'S IN THE CAPACITOR MANUFACTURING BUSINESS OR EVEN THE PURCHASING OF THEM, THE OUTSIDE IS CALLED THE TERMINATION, AND THE TERMINATIONS OFTEN HAVE MULTIPLE LAYERS. IN SOME CASES, THEY WOULD ONLY BE A SINGLE LAYER, LIKE IT WAS DIPPED. IN OTHER CASES, THEY COULD HAVE MULTIPLE LAYERS, LIKE THE GOLD COATING FOR ELECTRICAL CONDUCTIVITY, FOR EXAMPLE.

THE COURT: SO 12 AND 13 IS WHAT WE'RE TALKING ABOUT.
BY MR. AHRENS:
Q. TWELVE AND 13 ARE THOSE TERMINATIONS, RIGHT? THOSE ARE THE THINGS THAT ARE ON THE OUTSIDE OF THE DIELECTRIC BODY.
A. YES, BUT --
Q. IS THAT CORRECT?
A. THAT'S RIGHT, EXACTLY. IF ANOTHER COATING WAS PUT ON TOP OF THE CONTACT, THAT WOULD BE A TERMINATION, YES.
Q. OKAY. SO A PERSON SKILLED IN THE ART ROUTINELY MAKES THESE DEVICES USING MULTIPLE LAYERS. IS THAT RIGHT?
A. YES, IT'S OFTEN DONE. YES, IT'S OFTEN DONE.
Q. ALL RIGHT.
THE COURT: OUT OF DIFFERENT MATERIALS?
THE WITNESS: YES, ACTUALLY. DOING IT FROM THE SAME MATERIAL WOULDN'T PROVIDE ADDITIONAL FUNCTION, SO THEY'RE DIFFERENT MATERIALS AND THEY'RE DIFFERENT LAYERS.
BY MR. AHRENS:
Q. SO, IF WE FOLLOW THAT TRAIN OF LOGIC, LET'S SAY YOU HAD THREE LAYERS, ONE, TWO, THREE. THE INNERMOST LAYER IS WHAT'S PHYSICALLY TOUCHING THE PLATES, RIGHT?
A. YES.
Q. THE SECOND LAYER ISN'T PHYSICALLY TOUCHING THOSE PLATES, BUT BECAUSE IT'S A CONDUCTIVE MATERIAL AND IT'S ON THE FIRST LAYER, IT'S GOING TO BE IN ELECTRICAL CONTACT WITH THOSE PLATES, RIGHT, EVEN THOUGH IT'S NOT IN PHYSICAL CONTACT?

A. IT WILL BE IN ELECTRICAL CONTACT WITH THE PLATES.
Q. OKAY.
A. IT WILL HAVE ELECTRICAL CONNECTION WITH THE PLATES, NOT ELECTRICAL CONTACT.
Q. OKAY, AND NOT ELECTRICAL CONTACT, BUT ELECTRICALLY CONNECTED. INTERESTINGLY, DOESN'T THE CLAIM TERM IN DISPUTE SAY THAT THE CONDUCTIVE FIRST CONTACT IS ELECTRICALLY CONNECTED TO THE FIRST PLATE? ISN'T THAT THE TERM THAT WE'RE DISPUTING?
A. I THINK SO, YES.
Q. ALL RIGHT. SO WE'VE GOT MULTIPLE LAYERS, WHICH IS COMMON IN THE INDUSTRY, VS. SKILLED IN THE ART TO DO THAT, AND THE SECOND OUTER LAYER ISN'T IN PHYSICAL CONTACT WITH THE PLATES, BUT YET IT'S IN ELECTRICAL CONNECTION WITH THOSE PLATES. IS THAT SORT OF A FAIR ASSESSMENT AT THE MOMENT?
A. YES.
Q. OKAY, AND LET'S SAY YOU'RE CONNECTING THIS ENTIRE UNIT TO A CIRCUIT BOARD AND YOU'RE USING THOSE SAME CONTACTS. IT'S GOING TO BE THE OUTER LAYER THAT'S GOING TO BE MAKING THAT DIRECT PHYSICAL CONNECTION TO THE CIRCUIT BOARD, RIGHT? BECAUSE THAT'S ON THE OUTSIDE.
A. OF COURSE.
Q. AND THEN THROUGH THE CONNECTION OF THE CIRCUIT BOARD, THE OUTER LAYER, THE INNER LAYER, TO THE PLATE, YOU'RE GOING TO HAVE THE ELECTRICAL CONNECTION, RIGHT?
A. YES.

Q. AND THAT'S HOW IT'S INTENDED TO WORK, RIGHT?
A. IF YOU WERE MAKING A MULTILAYER TERMINATION, YES.
Q. OKAY.
THE COURT: SO LET'S SAY THERE ARE THREE LAYERS IN THIS MULTILAYER TERMINATION.
THE WITNESS: YES.
THE COURT: THE ONE ON THE, THE MOST, THE OUTSIDE EDGE, NOT THE ONE ON THE INSIDE CONNECTING, TOUCHING THE METAL PLATES, THE ONE ON THE OUTSIDE, IS THAT THE TWO WE'RE TALKING ABOUT?
MR. AHRENS: YES.
THE COURT: WELL, HOW IS THAT CONNECTED TO THE CIRCUIT BOARD?
THE WITNESS: THAT TYPICALLY WOULD BE SOLDERED TO THE CIRCUIT BOARD, SO THERE WOULD BE ACTUALLY ANOTHER LAYER OF MATERIAL IN BETWEEN THAT WOULD BE SOLDERED. IT WOULD BE CONNECTING TO THE COPPER TRACE ON THE PRINTED CIRCUIT BOARD.
THE COURT: SO THE MIDDLE LAYER WOULD BE ELECTRICALLY CONNECTED TO THE CIRCUIT BOARD.
THE WITNESS: WELL (PAUSE), YEAH.
THE COURT: I MEAN, IS THAT THE WAY IT IS?
MR. AHRENS: YES. I MEAN, THE ELECTRICAL CONNECTION GOES FROM THE PLATE ALL THE WAY TO THE CIRCUIT BOARD. THAT'S THE NATURE OF IT.
THE COURT: IS THAT CORRECT?

THE WITNESS: IT'S CORRECT. ACTUALLY, EACH OF THESE LAYERS WOULD HAVE A DIFFERENT PHYSICAL CHARACTERISTIC AND A CHEMICAL CHARACTERISTIC, AND THEY WOULD HAVE A DIFFERENT RESISTANCE. SO IT WOULDN'T BE LIKE TAKING ONE RESISTOR, ONE RESISTOR. EACH LAYER WOULD HAVE TO BE A DIFFERENT RESISTANCE AND YOU WOULD PUT THEM ALL IN A SERIES, AND THEN THE AMOUNT OF CURRENT THAT FLOWS THROUGH AND THE CONTACT WOULD BE, YOU KNOW, LIMITED BY ALL THREE RESISTANCES, BECAUSE THEY'RE ALL CONNECTED IN THE SAME CURRENT FLOW, SO IT WOULD HAVE TO GO THROUGH ALL OF THEM.

THE COURT: GO AHEAD.

BY MR. AHRENS:

Q. LET'S TALK ABOUT SUBSTANTIALLY MONOLITHIC JUST BRIEFLY. YOU INDICATED THAT -- I MEAN, THE DEFINITION YOU ALL HAVE PROPOSED IS LARGELY WITHOUT SEAMS DUE TO THE INCLUSION OF PLATES, AND YOUR TESTIMONY HERE TODAY, AND I DON'T HAVE A REAL-TIME TRANSCRIPT, WAS ONE THAT TRIED TO INCLUDE THE PLATES. DO YOU REMEMBER SAYING THAT?

A. THAT SOUNDS LIKE SOMETHING I WOULD HAVE SAID.

THE COURT: WELL, YOU SAID -- YOUR DEFINITION OR ATC'S DEFINITION INCLUDES THE WORD SEAMS, AND THEN I ASKED YOU, I THINK, WHY THAT, WHY DO YOU INCLUDE THAT? IS THAT WHAT YOU ARE ASKING?

MR. AHRENS: YES.

THE WITNESS: YES, AND I THINK I SAID, BECAUSE IN FACT

IF YOU LOOK AT THE EDGES, IN FACT IT APPEARS TO BE SEAMS, SO IT LOOKS THAT WAY.
THE COURT: ASK YOUR QUESTION NOW.
BY MR. AHRENS:
Q. SO, BASICALLY, YOU WANTED TO PUT IN THAT ADDITIONAL LIMITATION THAT THERE'S THESE SEAMS BECAUSE IT WOULD HELP YOU TO POINT OUT THE ORIENTATION OR THE, I GUESS THE ORIENTATION OF THE PLATES IN THE STRUCTURE. IS THAT RIGHT?
A. YES. THAT'S HOW A CAPACITOR DESIGNER WOULD UNDERSTAND IT, YES. I TRIED TO PUT IT IN TERMS THAT, YOU KNOW, SOMEBODY WHO WAS A CAPACITOR DESIGNER WOULD UNDERSTAND.
Q. OKAY. SO YOU'RE BASICALLY TRYING TO EXPLAIN THE INVENTION AND THE CLAIMS, EVEN THOUGH IT'S EXPLAINED IN THE SPECIFICATION, AND YOUR ISSUE OF SEAMS REALLY COMES FROM THE DRAWINGS. ISN'T THAT WHAT YOU SAID? YOU LOOKED AT THE DRAWINGS AND THEY ALL HAD THESE PLATES AND THEN THEY HAVE SEAMS BECAUSE OF THE PLATES. SO, BECAUSE THEY'RE IN THE DRAWINGS AND THEY WERE DESCRIBED, THEN YOU THOUGHT THEY SHOULD BE IN THE CLAIMS. RIGHT?
A. THEY WEREN'T SHOWN IN THE DRAWINGS. THE SEAMS WERE APPARENT IN THE THREE-DIMENSIONAL GRAPHIC THAT I PUT UP, BUT I DON'T BELIEVE THEY WERE SHOWN IN ANY OF THE '356 DRAWINGS, TO MY RECOLLECTION.
Q. SO THESE SEAMS THAT YOU TALK ABOUT AREN'T EVEN SHOWN IN THE PATENT. SO NOW YOU'RE PUTTING INTO THE CLAIM OF THE PATENT

THINGS THAT AREN'T EVEN SHOWN, BUT YOU SURMISE BASED ON YOUR 3-D MODEL. IS THAT RIGHT?

A. THEY WOULD BE THINGS THAT WOULD BE CLEARLY UNDERSTOOD BY A CAPACITOR DESIGNER.

Q. WELL, WOULD IT BE CLEARLY UNDERSTOOD THAT THE CONTACT FOR THIS OR THAT THE CERAMIC MATERIAL MIGHT BE -- WHAT DID YOU SAY? BARIUM SULFATE?

A. BARIUM TITANATE.

Q. BARIUM TITANATE. WOULD THAT BE COMMON?

A. IT WOULD BE THE MOST COMMON, YES.

Q. WHY DIDN'T YOU PUT THAT IN THERE? WHY DIDN'T YOU PROPOSE THAT WE PUT THAT IN THERE?

A. (PAUSE)

Q. I MEAN, IF THAT WOULD BE COMMONLY UNDERSTOOD, WHY DIDN'T YOU SAY, HEY, WE NEED TO USE BARIUM TITANATE?

MR. GITTES: OBJECTION, YOUR HONOR. ARGUMENTATIVE.

THE COURT: SUSTAINED.

YOU DON'T HAVE TO ANSWER THAT.

THE WITNESS: OKAY. THANK YOU.

BY MR. AHRENS:

Q. NOW, WITH RESPECT TO THE ISSUE OF CONTACTS AND THE TOUCHING AND THE ELECTRICAL CONNECTION, YOU SAID THAT YOU HAD PUT IN THE CLAIMS THAT THERE WAS THIS PHYSICAL CONTACT BECAUSE IT WOULDN'T OPERATE AS CLAIMED. ISN'T THAT WHAT YOU SAID?

A. YES.

Q. SO DOES THAT MEAN THAT IF YOU WERE GOING TO WRITE A CLAIM TO A CAR, YOU'D HAVE TO INCLUDE IN THE CLAIM EVERY COMPONENT OF THE CAR THAT WOULD ALLOW IT TO RUN?

MR. GITTES: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

JUST ASK HIM.

MR. AHRENS: PARDON ME?

THE COURT: BE MORE SPECIFIC ABOUT WHAT YOU'RE ASKING HIM.

BY MR. AHRENS:

Q. I MEAN, IS IT YOUR UNDERSTANDING OF SOME PATENT-LAW PRINCIPLE THAT YOU'VE GOT TO HAVE IN THE CLAIM EVERY ASPECT FOR THE INVENTION TO BE A COMMERCIAL PRODUCT?

A. I DON'T CLAIM TO BE AN EXPERT ON PATENT-LAW PRINCIPLES. I WAS REALLY TRYING TO BE TECHNICALLY PRECISE AND MAKE SURE THAT MY COLLEAGUES AND COUNSEL DIDN'T MAKE ANY TECHNICAL MISTAKES.

MR. AHRENS: NOW, I THINK I'M FINISHED ON THE LAYER ISSUE.

THE COURT: WELL, WHAT WAS YOUR QUESTION ABOUT THE, WHAT WAS YOUR POINT ON THE LAST QUESTION THAT YOU WERE ASKING?

MR. AHRENS: WELL, HE HAD RAISED THE ISSUE THAT, OF COURSE, YOU HAVE TO INCLUDE IN THE CLAIM THIS LIMITATION ABOUT THE PHYSICAL TOUCHING, BECAUSE IF IT WASN'T PHYSICALLY TOUCHING, IT WOULDN'T WORK. THEREFORE, YOU'D HAVE TO INCLUDE IT IN THE CLAIM. MY POINT IS SIMPLY, THERE'S NO PRINCIPLE OF

PATENT LAW THAT SAYS YOU HAVE TO CLAIM EVERY COMPONENT IN A PATENT.

THE COURT: WELL, WHY DON'T YOU GET TO IT?

DOES IT WORK IF IT'S NOT PHYSICALLY CONNECTED?

THE WITNESS: NO.

BY MR. AHRENS:

Q. WELL, DIDN'T YOU JUST TESTIFY ABOUT THE MULTIPLE LAYERS AND YOU DON'T HAVE, THE THIRD LAYER ISN'T PHYSICALLY TOUCHING THE PLATE, BUT IT WORKS? BECAUSE THAT'S HOW THEY TYPICALLY ARE DESIGNED, IN MULTIPLE LAYERS. YOU'VE GOT THE ELECTRICAL CONNECTION, BUT NOT THE PHYSICAL CONNECTION. RIGHT?

A. BUT THAT'S NOT THE WAY THE CONTACT WAS DESCRIBED IN THE '356 SPECIFICATION.

Q. I'M ASKING YOU ABOUT IN REALITY. DO YOU HAVE TO HAVE THE THIRD LAYER PHYSICALLY TOUCHING THE PLATE FOR THE THING TO WORK?

A. NO.

Q. NO, OF COURSE NOT. SO, REALLY, YOUR SOLE BASIS IS THAT THEY SHOW A LAYER BECAUSE OF CROSS-HATCHING. YOU DON'T KNOW IF IT'S REALLY THE SAME MATERIAL BUILT UP IN MULTIPLE LAYERS. YOU JUST DON'T KNOW, BUT YOU DO AGREE THAT IN FACT THE MANUFACTURERS DO BUILD UP MULTIPLE LAYERS.

A. I, WHEN I LOOKED AT THE PATENT, I SAW --

Q. EXCUSE ME. DO YOU AGREE THAT THE MANUFACTURERS DO BUILD UP MULTIPLE LAYERS FOR THE TERMINATIONS, I.E., NUMBER 12 AND 13?

A. YES.

MR. GITTES: OBJECTION.

Q. THANK YOU. NOW --

THE COURT: OVERRULED.

Q. -- YOU WERE ASKED ABOUT THE FRINGE-EFFECT CAPACITY AND YOU SAID YOU COULDN'T REALLY UNDERSTAND IT, BUT DID YOU SEE IN THE PATENT SPECIFICATION WHERE IT TALKED ABOUT THERE WAS THIS ONE EXAMPLE OF A DIMENSION OF THOSE PLATES THAT WAS 2/1000THS OF AN INCH?

A. YES.

Q. DID YOU SEE THAT?

A. I REMEMBER SEEING THAT, YES.

Q. OKAY, AND DID YOU SEE THE VARIOUS REFERENCES IN THE SPECIFICATION TO THE BROADBAND SPECTRUM AT WHICH THE CAPACITOR ARRAYS MIGHT BE APPLICABLE, TEN TO A HUNDRED, 200 GIGAHERTZ?

A. I SAW NUMBERS LISTED IN THE TEXT.

Q. OKAY, AND I'M NOT SURE IF IN YOUR BOOK YOU ACTUALLY HAVE A COPY OF THE PATENT, BUT IF YOU WERE TO LOOK AT COLUMN 2, LINE 55 --

A. THERE'S NONE UP HERE.

Q. OKAY. MAYBE YOUR COUNSEL HAS A COPY FOR YOU. I'LL JUST READ IT: IT HAS GOOD HIGH-FREQUENCY PERFORMANCE, REDUCED RESISTANCE AND INDUCTANCE. SO THERE'S SOME DISCUSSION IN THE PATENT ABOUT HIGH-FREQUENCY PERFORMANCE IN THE CONTEXT OF RESISTANCE AND INDUCTANCE. ISN'T THAT RIGHT?

A. THAT WAS IN THE SPECIFICATION, YES.

Q. YES, AND INDEED THERE'S ALSO A LENGTHY DISCUSSION, ALTHOUGH I KNOW YOU DON'T REALLY LIKE THE QUALITY OF FIGURE 21-A AND -B, BUT, NONETHELESS, IT DOES DESCRIBE THE PHILOSOPHY OF INSERTION LOSS IN THAT THE INVENTION IS INTENDED TO REDUCE THE INSERTION LOSS BY THIS ARRAY OF CAPACITORS, RIGHT? DID YOU READ THAT DESCRIPTION?

A. I SAW THE DESCRIPTION AND I SAW THE FIGURE.

Q. AND YOU UNDERSTAND WHAT INSERTION LOSS IS, I'M ASSUMING.

A. I UNDERSTAND WHAT INSERTION LOSS IS, YES.

Q. OKAY. SO REDUCING INSERTION LOSS, REDUCING RESISTANCE AND INDUCTANCE ARE DESCRIBED AS HIGH-FREQUENCY PERFORMANCE CHARACTERISTICS RIGHT HERE IN THE '356 PATENT, AREN'T THEY?

A. THEY'RE DESCRIBED -- NOW, THE WAY TO DO THEM IS NOT DESCRIBED.

Q. RIGHT.

A. BUT THEY OCCUR.

Q. RIGHT. I ASKED YOU THE FACT THAT THEY OCCUR, IT'S RIGHT IN HERE. IT EVEN SAYS IT RIGHT IN HERE IN THE CONTEXT OF HIGH-FREQUENCY PERFORMANCE.

A. THERE'S NO DATA ON IT.

Q. I DIDN'T ASK YOU IF THERE WAS DATA. I ASKED YOU IF THESE CONCEPTS WERE IN THE PATENT, THE VERY CONCEPTS THAT ARE IN THE PROPOSED CONSTRUCTION OF PRESIDIO.

A. THOSE CONCEPTS ARE IN ANY TEXTBOOK.

Q. ARE THEY?
A. THERE'S LOTS OF TEXTBOOKS ON HOW TO DESIGN HIGH-FREQUENCY COMPONENTS. THE SAME CONCEPTS WOULD BE IN EVERY TEXTBOOK.
Q. BECAUSE FRINGE-EFFECT CAPACITANCE IS JUST IN THE ABSTRACT AS A KNOWN COMMODITY. WE UNDERSTAND THAT, BUT THE CONCEPT OF PUTTING IT TOGETHER FOR THE CAPACITOR ARRAY AS SHOWN IN THE PATENT IN SUIT IS NOT EXACTLY THE SAME AS WHAT'S IN THOSE TEXTBOOKS, IS IT?
A. OH, ACTUALLY, WE PUT TOGETHER A PROPOSAL TO THE AIR FORCE IN 1990 THAT HAD SOME VERY SIMILAR FIGURES TO WHAT I'VE SEEN IN THE PATENT.
MR. AHRENS: WELL, I MOVE TO STRIKE, BECAUSE WE DON'T HAVE ANY FOUNDATION FOR THAT AND I HAVEN'T SEEN ANY EVIDENCE OF THAT TODAY.
THE COURT: BUT WHAT ARE YOU ASKING HIM?
BY MR. AHRENS:
Q. IF INDEED THE CONCEPTS THAT I JUST SHOWED YOU THAT WERE IN THE PATENT ARE THERE AND THAT'S WHAT PRESIDIO'S CLAIM CONSTRUCTION IS CALLING FOR, AS YOU UNDERSTAND IT.
A. THE CLAIM CONSTRUCTION, IN MY MIND, DIDN'T ACTUALLY FULFILL THAT WISH THAT WAS IN THE SPECIFICATION.
Q. AFFECTING THE HIGH-FREQUENCY PERFORMANCE, THAT'S EXACTLY, THOSE ARE THE WORDS IN THE SPECIFICATION, RIGHT?
A. THAT'S, THAT'S THE WORDS IN THE SPECIFICATION.
Q. AND THOSE ARE EXACTLY THE WORDS IN PRESIDIO'S DEFINITION,

RIGHT?

A. THOSE ARE EXACTLY THE WORDS IN THERE. THERE'S NOTHING IN THE CLAIM THAT WOULD HELP ME AS A CAPACITOR DESIGNER TO DO IT.

Q. SO NOW YOU'RE TALKING ABOUT, YOU KNOW, THE ISSUE OF INFRINGEMENT, BUT WE'RE NOT HERE TO TALK ABOUT INFRINGEMENT, RIGHT?

A. I WASN'T SURE. I'M JUST ANSWERING THE QUESTIONS.

THE COURT: YOU CAN'T ASK HIM LEGAL QUESTIONS.

MR. AHRENS: SORRY?

THE COURT: YOU CAN'T ASK HIM LEGAL QUESTIONS.

MR. AHRENS: NO, NO, I DEFINITELY WON'T DO THAT.

BY MR. AHRENS:

Q. SO DO YOU AGREE THAT THE FIRST PLACE THAT YOU SHOULD LOOK WHEN YOU'RE DOING CLAIM CONSTRUCTION IS THE PATENT AND THE SPECIFICATION IN THE PATENT? IS THAT SOMETHING THAT YOU DO UNDERSTAND?

A. YES.

Q. OKAY. SO YOU SHOULDN'T SKIP THAT AND GO SOMEWHERE ELSE BEFORE YOU LOOK AT THE PATENT ITSELF. CORRECT?

A. YES.

Q. ALL RIGHT.

MR. AHRENS: CAN I HAVE A SECOND?

THE COURT: SURE.

(OFF-THE-RECORD DISCUSSION)

BY MR. AHRENS:

Q. IN YOUR UNDERSTANDING OF THE CLAIM-CONSTRUCTION PRINCIPLES, YOU'RE AWARE THAT IMPORTING LIMITATIONS INTO THE CLAIM IS NOT PROPER, RIGHT?
A. YES.
MR. AHRENS: OKAY, THANK YOU.
I HAVE NOTHING FURTHER AT THIS POINT.
THE COURT: DO YOU WANT HIM TO REMAIN ON THE STAND FOR ANY FURTHER QUESTIONS, OR DO YOU WANT TO JUST (PAUSE) --
MR. GITTES: WE ASK THAT THE WITNESS BE EXCUSED, YOUR HONOR.
THE COURT: OKAY.
YOU DIDN'T KNOW IT WOULD BE THAT TOUGH, DID YOU?
THE WITNESS: NO, I DIDN'T, ACTUALLY.
THE COURT: YOU WERE HELPFUL, SO DON'T THINK YOU WEREN'T.
THE WITNESS: OKAY.
THE COURT: OKAY?
THE WITNESS: I WISH MY STUDENTS PAID AS MUCH ATTENTION AS YOU DID.
THE COURT: THANK YOU.
YOU MAY STEP DOWN.
(THE WITNESS STOOD ASIDE.)
THE COURT: MR. GITTES, IS THERE ANYTHING THAT YOU WANT TO AT THIS TIME ARGUE OR RAISE?
LET'S GO BACK TO THE STANDING ISSUE, WHICH WAS THE

FIRST ISSUE THAT YOU RAISED. I WENT BACK TO SEE IF THERE WAS ANY KIND OF A MOTION TO DISMISS AND THERE ISN'T. I MEAN, I KNOW YOU RAISED IT IN YOUR BRIEFING, SO THAT'S WHY I DIDN'T ADDRESS IT AND I PROCEEDED, BECAUSE THERE'S NO -- I'M NOT GOING TO REACH THAT ISSUE UNLESS THERE'S A MOTION, AND, SECONDLY, THE OTHER SIDE HAS AN OPPORTUNITY TO RESPOND OR BRIEF IT. I ASSUME IT MAY COME UP IN A MOTION TO CONSOLIDATE NOW THAT'S PENDING, THAT WE'VE GIVEN A DATE. WELL, THEY HAVEN'T FILED.

YES, YOU DID FILE YOUR MOTION TO CONSOLIDATE. CORRECT?

MR. AHRENS: YES. WE WERE GIVEN A HEARING DATE BY THE COURT --

THE COURT: I KNOW.

MR. AHRENS: -- IN JUNE.

THE COURT: JUNE. MAY IS KIND OF TOUGH. WHAT DATE IN JUNE?

MR. AHRENS: JUNE 23RD.

THE COURT: OH, IT'S ALREADY ON THERE.

MR. AHRENS: IT'S ENDORSED.

MR. GITTES: JUNE 23RD, YOUR HONOR.

THE COURT: SO YOUR RESPONSE WOULD BE DUE TWO WEEKS BEFORE THAT, AND I ASSUME YOU'LL RAISE MAYBE THE STANDING ISSUE AT THAT TIME AND WE CAN TAKE CARE OF IT AT THAT TIME.

MR. GITTES: YES, YOUR HONOR. WE WERE UNDER THE IMPRESSION WE NEEDED TO FIND THE FACTS, BUT IT GOES TO THE

SUBJECT MATTER JURISDICTION THAT THEY ALLEGED. WE ASKED FOR A COPY OF THE ASSIGNMENT AND WE HAVE NOT SEEN IT.

THE COURT: YES, BUT NOW I NEED THEM TO RESPOND. I MEAN, I'M NOT GOING TO DISMISS THIS CASE, AND I KNOW SUBJECT MATTER JURISDICTION IS SOMETHING THAT I CAN RAISE AT ANY TIME *SUA SPONTE*, BUT I'M NOT GOING TO DO IT WITHOUT AN ADEQUATE RESPONSE FROM THE OTHER SIDE, AND MAYBE EVEN AN OPPORTUNITY TO ARGUE IT. BUT I UNDERSTAND THAT IT'S SOMETHING THAT IS KIND OF LOOMING THERE THE WHOLE TIME, AND IT MAY BE THAT IT WILL BE RESOLVED AFTER WE HAVE THE HEARING ON JUNE 23RD. IN THE MEANTIME, I ASSUME THE '356 PATENT IS IN THE SAME, IS IN THE SECOND CASE, AND, NOW, WHETHER I SHOULD CONSTRUE THE CLAIMS PRIOR TO THE MOTION TO CONSOLIDATE IS ANOTHER ISSUE, AND I DON'T KNOW IF YOU HAVE ARGUMENT ON THAT OR YOU'D RATHER WAIT.

MR. GITTES: IF THE COURT IS GOING TO GO THROUGH THE TIME AND EFFORT TO CONSTRUE THE CLAIMS, I WOULD CERTAINLY WANT THAT CONSTRUCTION TO APPLY REGARDLESS OF WHICH CASE THE CONSTRUCTION IS APPROPRIATE FOR.

THE COURT: YES.

MR. GITTES: MY ISSUE, YOUR HONOR, IS THE SUBJECT MATTER JURISDICTION. SHOULD THIS CASE BE VACATED? I'M NOT ABLE TO DIVINE THE LOGIC OF CONSOLIDATING A SECOND CASE WITH A CASE THAT GETS VACATED BECAUSE THEY'RE ONLY LEFT WITH THE SECOND CASE.

THE COURT: BUT USUALLY, I MEAN, I HAVE ADDRESSED

SUBJECT MATTER JURISDICTION, PERSONAL JURISDICTION, MANY TIMES AND IT'S USUALLY IN THE CONTEXT OF A MOTION TO DISMISS THAT'S BROUGHT BY THE SIDE THAT'S PROPOSING THAT I DISMISS BASED ON THAT. I DON'T HAVE THAT IN FRONT OF ME RIGHT NOW. I HAVE, I MEAN, OBVIOUSLY, I HAVE THE ANSWER TO THE COMPLAINT THAT YOU FILED AND I HAVE THE ISSUES THAT HAVE BEEN RAISED IN YOUR BRIEFS REGARDING THE CLAIM CONSTRUCTION, BUT IF YOU WANT TO RAISE IT IN THE CONTEXT OF A MOTION TO DISMISS, AND WE CAN HEAR THAT MAYBE AT THE SAME TIME AS WE HEAR, AS THE JUNE 23RD HEARING, WE CAN DO THAT, TOO. WE CAN DO IT ON THAT DATE, BUT YOU HAVE TO FILE YOUR MOTION FOUR WEEKS BEFORE THAT DATE, WHICH WOULD BE, YOU KNOW, BY WHATEVER THAT FOUR WEEKS ARE, MAY 23RD OR 22ND, FILE IT BY THEN, AND THEN THE OTHER SIDE CAN RESPOND, AND WE CAN JUST DO EVERYTHING ON THAT DATE.

MR. GITTES: WELL, WE WILL CERTAINLY DO THAT, YOUR HONOR.

THE COURT: SO THAT WILL HELP ME, AND WE CAN JUST TAKE CARE OF EVERYTHING AT THAT TIME.

MR. GITTES: BUT BEFORE WE CAN DO THAT, I'VE GOT TO SEE THE PURPORTED ASSIGNMENT AND WE HAVE NOT SEEN THAT.

THE COURT: I ASSUME YOU'VE BEEN IN DISCOVERY THROUGHOUT THIS PROCESS, OR, YOU KNOW.

MR. GITTES: WE'VE HAD THE BASIC RULE 26 STUFF.

THE COURT: RIGHT.

MR. GITTES: THERE'S BEEN NO DISCOVERY RELATED TO

THAT.

THE COURT: BUT HOW WAS IT THAT YOU REQUESTED THE ASSIGNMENT? REQUESTS FOR PRODUCTION OR IN THAT CONTEXT? FOR PRODUCTION OF DOCUMENTS?

MR. GITTES: I BELIEVE WE REQUESTED IT AS PART OF THE RULE 26 MOTION AND DIDN'T GET IT. WE ASKED FOR IT.

THE COURT: LET ME ASK YOU NOW. IS THERE AN ASSIGNMENT?

MR. AHRENS: YES, FOR SURE.

THE COURT: WELL, THEN, WHY WASN'T IT PRODUCED? I WANT YOU TO PRODUCE IT.

MR. AHRENS: YES, WE'LL PRODUCE IT. THERE'S BEEN A BIT OF A HIATUS. NOBODY HAS REALLY EXCHANGED --

THE COURT: WHY DON'T YOU STAND?

I'M SORRY. THAT NOBODY HAS WHAT?

MR. AHRENS: THERE'S BEEN A BIT OF A HIATUS IN THE PRODUCTION OF DOCUMENTS BACK AND FORTH. MR. SCHATZ CAN TALK ABOUT THAT.

MR. SCHATZ: THANK YOU, YOUR HONOR.

ABOUT A MONTH AND A HALF AGO, WE WENT OVER TO ATC COUNSEL AND INFORMED THEM THAT WE WERE PREPARED FOR A MUTUAL EXCHANGE OF DOCUMENTS, AND WE'VE NOT HEARD BACK FROM ATC WITH REGARD TO THAT.

THE COURT: COUNSEL.

MR. SLONIM: IF I MAY ADDRESS YOUR HONOR.

THE COURT: YES.

MR. SLONIM: THERE HAS BEEN AN ISSUE WITH THE PROTECTIVE ORDER AND NOW IT HAS BEEN RESOLVED, AND SINCE THAT TIME BOTH PARTIES, I THINK, FOCUSED ON THE MARKMAN ISSUE, BUT THERE WERE DOCUMENT REQUESTS, SPECIFICALLY FOR PRODUCTION OF THAT ASSIGNMENT, WHICH WE BELIEVE PROBABLY IS NOT EVEN CONFIDENTIAL, WHICH IS OUTSTANDING, AND THEY HAVEN'T PRODUCED IT TO US. WE DID EXCHANGE CERTAIN DOCUMENTS AND WE'RE IN THE PROCESS OF DOING THAT, BUT WE REQUESTED NUMEROUS IT TIMES. IT HASN'T BEEN PRODUCED TO US, BUT WE CONTINUED WITH THE OTHER DOCUMENT PRODUCTION.

THE COURT: WHEN CAN IT BE PRODUCED?

MR. AHRENS: AS SOON AS WE GET BACK TO CINCINNATI, WHICH, HOPEFULLY, WILL BE TOMORROW.

THE COURT: OKAY. SO YOU WILL HAVE IT, AND YOU WILL BE ABLE TO FILE YOUR MOTION ON TIME, IF YOU STILL PROCEED WITH YOUR MOTION TO DISMISS, AND, HOPEFULLY, THE DOCUMENT WILL ASSIST YOU IN DETERMINING WHETHER THERE'S SUBJECT MATTER JURISDICTION. I'M CERTAINLY OPEN TO HEARING WHATEVER ARGUMENTS YOU HAVE ON THAT ISSUE.

MR. SLONIM: AND IF THERE IS ANY NEED FOR DEPOSITIONS ON THAT ISSUE, WE WOULD BE ABLE TO CONDUCT THOSE?

THE COURT: YOU WOULD BE ABLE TO. I WILL ALLOW ANY DEPOSITIONS THAT NEED TO BE TAKEN, AND, OBVIOUSLY, I'LL RESTRICT IT TO MAYBE TWO DEPOSITIONS PER SIDE, REGARDING THE

ISSUE OF THE ASSIGNMENT, OR I GUESS SUBJECT MATTER JURISDICTION. THAT WILL MAKE IT MORE BROAD.

MR. SLONIM: THANK YOU VERY MUCH.

THE COURT: UNLESS -- YOU HESITATED. IS THERE SOMETHING ELSE YOU NEED OR CLARIFIED?

MR. SLONIM: MY ONLY ISSUE NOW THAT I SEE, THE MOTION IS DUE MAY 23RD, BASED ON THIS HEARING DATE, WHICH IS A LITTLE, YOU KNOW, TIME CRUNCH FOR A COUPLE OF DEPOSITIONS. IF WE MAY BE ABLE TO, AND I'M NOT SURE WHETHER THE WITNESSES WE'D BE DEPOSING ARE AVAILABLE, AND COUNSEL. THIS MAY BE A LITTLE TIME CRUNCH FOR US, AND WE WANT TO PRESENT THE FULL RECORD.

THE COURT: DO YOU WANT TO DO IT -- WE CAN MOVE THE HEARING MAYBE ANOTHER WEEK OR SO.

MR. SLONIM: I THINK WE WILL TRY TO WORK IT OUT WITH COUNSEL TO MAKE THAT DEADLINE.

THE COURT: OKAY, BECAUSE I CAN DO IT JUNE 30TH, AT 10:30, AS OPPOSED TO JUNE 23RD.

MR. SLONIM: I THINK THAT PROBABLY WILL ACCOMMODATE THE NEED FOR ADDITIONAL DISCOVERY HERE TO PRESENT THE MOTION.

THE COURT: ALL RIGHT, LET ME FIND MY CALENDAR.

I COULD DO IT JUNE 30TH, AT 10:30, ORAL ARGUMENT ON ANY MOTIONS THAT ARE FILED, AND SO I'LL VACATE THE JUNE 23RD DATE, MOVE THE MOTION TO CONSOLIDATE AND ANY MOTION TO DISMISS TO JUNE 30TH, AT 10:30, AND THAT MEANS THAT ANY MOVING PAPERS MUST BE FILED BY JUNE 2ND.

MR. SLONIM: THANK YOU, YOUR HONOR.

THE COURT: AND UNDER THE LOCAL RULES, IT'S 28 DAYS PRIOR TO THE HEARING FOR MOVING PAPERS, 14 DAYS BEFORE THE HEARING FOR OPPOSING, AND ONE WEEK FOR A REPLY.

MR. SLONIM: I THINK WE'LL GET RIGHT TO WORK NEXT WEEK WITH SOME DEPOSITIONS.

THE COURT: HOPEFULLY, THAT GIVES YOU ENOUGH TIME TO DO IT.

MR. SLONIM: THANK YOU.

THE COURT: AND SO THEN, HOPEFULLY, BY MONDAY, THAT YOU RECEIVE THE ASSIGNMENT, THE DOCUMENT THAT'S BEEN MENTIONED, BECAUSE TOMORROW IS FRIDAY AND I DON'T KNOW WHEN THEY GET BACK, BUT PUTTING IT BY MONDAY, HOPEFULLY, THAT WILL GIVE YOU ENOUGH TIME.

MR. SLONIM: THANK YOU, YOUR HONOR.

THE COURT: AS FAR AS ANY OF THE CLAIM-CONSTRUCTION ISSUES, IS THERE ANYTHING ELSE THAT YOU WANT TO DISCUSS AT THIS TIME, MR. GITTES?

MR. GITTES: JUST A MOMENT, AND I MEAN A MOMENT.

THE COURT: OKAY.

MR. GITTES: I WOULD JUST LIKE TO POINT OUT TO THE COURT THAT WHAT WAS PRESENTED TODAY WAS ATTORNEY ARGUMENT FROM THE STANDPOINT OF PRESIDIO AND THE TESTIMONY OF AN EXPERT ON BEHALF OF ATC. PRESIDIO HAD AN EXPERT. THEY CHOSE NOT TO BRING HIM, AND IF THE COURT LOOKS AT OUR BRIEFS, I THINK THE

COURT WILL RECOGNIZE WHY HE WASN'T HERE. I WOULD POINT OUT THAT A LAWYER'S ARGUMENT SHOULDN'T BE EQUATED TO THE TESTIMONY OF THE TRUE EXPERT.

I WOULD ALSO POINT OUT THAT THE CONTACTS ARE REPEATEDLY SHOWN IN ALL THE EMBODIMENTS AND THE SPECIFICATIONS OF THE PATENT IN SUIT IN THE SINGLE-LAYER CONTEXT. THE FEDERAL CIRCUIT HAS SAID, WHEN SOMETHING IS REPEATEDLY SHOWN AS SOMETHING, IT SHOULD BE INTERPRETED TO BE THAT SOMETHING. IN THIS CASE, IT'S A SINGLE LAYER.

THE FEDERAL CIRCUIT HAS ALSO SAID, DO NOT IMPORT WORDS, BUT THAT'S PRECISELY WHAT PRESIDIO HAS DONE WITH THE WORD FREQUENCY, AND IT JUST DOESN'T APPEAR IN THE CLAIM. SIMILARLY, WE WOULD ALSO POINT OUT THAT IT IS THE DIELECTRIC BODY THAT HAS TO HAVE THE HEXAHEDRON SHAPE AND NOT THE CAPACITOR *PER SE*.

I HAVE NOTHING FURTHER, YOUR HONOR.

THANK YOU. I APPRECIATE THE COURT'S TIME TODAY.

THE COURT: THANK YOU.

I HOPE I DIDN'T RUSH YOU. I KNOW I DID TO A CERTAIN EXTENT.

I UNDERSTAND WHAT I'M SUPPOSED TO LOOK AT. I MEAN, THERE IS A HIERARCHY OF WHAT THE FEDERAL CIRCUIT HAS SAID, AND THE NINTH CIRCUIT, WHAT I LOOK AT INITIALLY IN ORDER TO BE ABLE TO CONSTRUE CLAIMS, AND, OBVIOUSLY, I GO DOWN THE LINE AND IF I FEEL, UNDER THE LAW, THAT EXTRINSIC EVIDENCE IS SOMETHING THAT

I NEED TO LOOK AT, THEN I'LL DO THAT, BUT IT HELPS AT TIMES TO HAVE AN EXPERT TO GIVE ME A TUTORIAL ABOUT WHAT THIS THING IS, HOW IT'S USED IN THE REAL WORLD. AND, OF COURSE, I'M NOT A PERSON SKILLED IN THE ART, AS YOU CAN SEE. SO IT DID HELP, BUT I UNDERSTAND WHAT I'M SUPPOSED TO LOOK AT, AND I WILL.

I HAVE TO NOW THINK ABOUT WHETHER I'M GOING TO ISSUE MY ORDER BEFORE THE JUNE 30TH HEARING OR WAIT. I HAVE TO THINK ABOUT IT.

EVEN IF I DO IT BEFORE JUNE 30TH, WHICH I'M INCLINED TO DO, THEN IT PROBABLY WILL NOT BE FOR SEVERAL WEEKS. I'VE GOT OTHER MATTERS THAT I HAVE TO TEND TO AND THAT I'M KIND OF BACKED UP ON. SO I WILL GET SOMETHING OUT, BUT IT WILL PROBABLY BE SEVERAL WEEKS BEFORE YOU GET ANYTHING FROM ME. OKAY?

WELL, THANK YOU VERY MUCH. IT WAS A PLEASURE HAVING YOU IN COURT, AND I LEARNED A LOT. WHETHER I'LL EVER APPLY IT AGAIN IN ANY CONTEXT, I DON'T KNOW, BUT, YOU KNOW, THAT'S THE INTERESTING THING ABOUT PATENT CASES.

OKAY, THANK YOU VERY MUCH.

(PROCEEDINGS ADJOURNED AT 11:50 A.M.)

(END OF TRANSCRIPT)

I, FRANK J. RANGUS, OFFICIAL COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND ACCURATE TRANSCRIPTION OF MY STENOGRAPHIC NOTES.

S/FRANK J. RANGUS

FRANK J. RANGUS, OCR